



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”)

Chamber Ref: FTS/HPC/CV/22/0098

**Re: 185F St Michael Street, Dumfries, DG1 2PP
 (“the Property”)**

Parties:

**The executors of the late Dilbagh Singh Athwal Singh, c/o Star Villa, 4 Annan Road, Dumfries, DG1 3AD
 (“the Applicants”)**

**Mr Faysal Macalin, formerly of 185F St Michael Street, Dumfries and now of an unknown address
 (“the Respondent”)**

Tribunal Member:

Pamela Woodman (Legal Member)

Present:

The case management discussion in relation to case reference FTS/HPC/CV/22/0098 took place at 2pm on Monday 11 April 2022 by teleconference call (“**the CMD**”). The Applicants were present but were represented by Mrs Sandra Thom of Sandra Thom Properties (“**the Applicants’ Representative**”). The Respondent was not present but was represented by Ian Maxwell of Dumfries & Galloway Citizens Advice Service (“**Respondent’s Representative**”) at the CMD. The clerk to the Tribunal was Mollie Yeats.

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:

BACKGROUND

1. The Applicants’ Representative made an application to the Tribunal on behalf of the Applicants under section 71(1) of the 2016 Act and in terms of the First-tier

Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended. More specifically, the application was made in terms of rule 111 (*Application for civil proceedings in relation to a private residential tenancy*) of the HPC Rules.

2. The order sought from the Tribunal was an order for payment against the Respondent in the sum of “£1,200 or such other sum as may be lawfully due to the Applicant by the Respondent as at the date of the Tribunal’s decision” and the reasons for making the application were stated to be “...arrears of rent to the property in the sum of £1,796 are lawfully due by the Respondent to the Applicant”.
3. The application was dated 11 January 2022, was submitted by the Applicants’ Representative and was accompanied by various documents, including copies of the following:
 - a. Unsigned agreement between the Respondent and “the executors of the late Dilbagh Athwal”, with Sandra Thom as letting agent, together with a photograph of the signed execution page, dated 4 July 2020 (“**Tenancy Agreement**”), providing for:
 - i. a start date of 9 July 2020;
 - ii. rent of £400 per calendar month, payable in advance;
 - iii. the first payment to be paid on 9 July 2020 for the period 9 July 2020 to 9 August 2020;
 - iv. future payments of rent must be received on or before the 9th of the month.

[These details were accepted by the Applicants’ Representative and the Respondent’s Representative during the CMD.]

- b. Rent schedule from 9 July 2020 to 2 January 2021 [sic] stating that there were arrears of £1,796 as at 2 January 2021 [sic];
 - c. Undated e-mail from Steven Athwal to customerservice@dghp.org.uk, confirming that he was a co-executor of the estate of the late Dilbagh Singh Athwal, listing the executors and confirming that grant of confirmation had not then been applied for but that Mrs Sandra Thom was authorised by the executors to deal with his late father’s rental properties.
4. In addition, the following was provided in advance of the CMD:
 - a. E-mail request from the Applicants’ Representative on 27 January 2022 asking to add £250 to the claim as a result of the Respondent having “kicked in the door”.
 - b. E-mail confirmation from the Applicants’ Representative to the Tribunal administration team on 1 February 2022 that the Respondent moved out on 31 January 2022.

- c. Application for service by advertisement dated 1 February 2022, together with e-mail from sheriff officers dated 2 February 2022 regarding a trace.
 - d. E-mail exchange with police in February 2022.
 - e. Invoice from BUSYNIZZY to Sandra Thom for works on 4 February 2022 for “removal and disposal of household items” from the Property at a cost of £260.
5. A notice of acceptance of the application was issued by the Tribunal dated 17 February 2022 under rule 9 of the HPC Rules, which confirmed that the application paperwork had been received by the Tribunal between 12 January 2022 and 6 February 2022.
 6. Service on the Respondent was undertaken by advertisement under rule 6A of the HPC Rules, through advertisement on 24 February 2022 for not less than 14 days.
 7. The Tribunal’s administration team was contacted by the Respondent’s Representative on 11 March 2022 requesting an extension of time (beyond 17 March 2022) to make written submissions but this was not granted.
 8. The Respondent had been invited to provide written representations by 17 March 2022 but had not done so.
 9. The Applicants, via the Applicants’ Representative had been advised by e-mail on 18 February 2022 that, if they wished to amend the sum claimed (i.e. from £1,200) then this should be intimated to the Tribunal at least 14 days prior to the date of the CMD and provide a revised rent statement and any receipts or vouching for any other sums claimed. The Applicants’ Representative had not done so.
10. This decision arises out of the CMD.

PROCEEDINGS, NAMELY THE CMD

11. The Respondent’s Representative explained that he had not been able to take instructions from the Respondent before the deadline for written submissions had passed because the Respondent had been ill but confirmed that he had instructions for the purposes of the CMD.
12. The Applicants’ Representative was asked about the discrepancy in the name of the owner of the Property and the name of the person whose executors were stated to be making the application. The Applicants’ Representative confirmed that they were the same person. This decision (and the order) are made out generically in respect of the executors of the person named in the application.
13. It was noted by the Tribunal that the due dates referred to in the rent schedule provided with the case papers should be the 9th of each month (based on the Tenancy Agreement details as noted above) but that, if the relevant due dates were

assumed to be the 9th of each month, then there was not more than one rent payment charged for each month covered by the rent schedule.

14. The Applicants' Representative was unable during the CMD to clarify exactly why there were different amounts stated in the application form with regard to the reason for making the application and in respect of the amount claimed.
15. The Applicants' Representative and the Respondent's Representative were not agreed on the termination date of the tenancy, being 31 January 2022 and 27 January 2022 respectively, but the Applicants' Representative confirmed that the Applicants would be willing to agree to this being 27 January 2022 if the order for payment was made today.
16. The Applicants' Representative also indicated that, if the order for payment was issued today, the other claims mentioned in the case papers would not be pursued. The Tribunal did not consider this to be binding upon the Applicants but was noted for completeness in light of the references to other potential claim amounts referenced above in this decision.
17. The Respondent's Representative confirmed that he was not instructed to release the new address for the Respondent to the Applicants and noted that the Respondent was unemployed and unlikely to be able to make payment of the outstanding amount of rent in one go.
18. There was a discussion on a number of points, the outcomes of which are noted in the findings of fact section below.

FINDINGS IN FACT

19. It was agreed between the Applicants' Representative and the Respondent's Representative that there were arrears of rent of no less than £1,196, the Applicants having had the rental deposit of £400 returned and two further payments of £50 having been made by the Respondent since the rent schedule had been prepared. There was not consensus between the respective representative as to whether or not a further payment of £100 had been paid or received but the Applicants' Representative confirmed that the Applicants would be willing to accept £1,196 (rather than £1,296) in arrears of rent if the order for payment was made today.
20. Accordingly, the Tribunal found, on the balance of probabilities, that £1,196 was due and payable by the Respondent to the Applicants.

REASONS FOR DECISION

21. £1,196 was below the amount claimed in the application form (namely £1,200) and so the Respondent had notice of the amount claimed from him.

22. The Applicants' Representative and Respondent's Representative agreed that the sum of £1,196 in respect of rent arrears was due and payable.

23. The Applicants' Representative and the Respondent's Representative agreed that an order for payment should be issued today and that the matter of a possible repayment plan would be discussed separately, a time to pay direction application not having been made. The Respondent's Representative had been given the opportunity to make submissions to refer the matter to a further case management discussion or hearing to allow time for a time to pay direction application to be made but had not made such a request.

DECISION

24. Accordingly, the Tribunal granted the application under section 71(1) of the 2016 Act for an order for payment in the sum of £1,196 (one thousand one hundred and ninety six pounds).

Right of Appeal

In terms of Section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

P Woodman

11 April 2022

Legal Member (chair)

Date