



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/CV/21/0813

Re: Property at 419 Kingspark Avenue, Rutherglen, Glasgow, G73 2AS (“the Property”)

Parties:

Mr Thomas Paterson, Flat 0/1, 1 Braids Circle, Paisley, PA2 6HS (“the Applicant”)

Miss Leigh MacCallum, 419 Kingspark Avenue, Rutherglen, Glasgow, G73 2AS (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment by the Respondent in the sum of £5,300 should be made in favour of the Applicant.

Background

1. By application received 1 April 2021, the Applicant sought a payment order against the Respondent in the sum of £5,300 in respect of rent arrears plus interest thereon. The claim for interest was subsequently removed from the application. Supporting documentation was submitted with the application and subsequently in terms of the Regulations, including a rent arrears schedule.
2. The application was subsequently accepted by a Legal Member of the Tribunal acting with delegated powers from the Chamber President who issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations dated 24 May 2021. Notification of the application was then made to the Respondent and the date, time and arrangements for a Case

Management Discussion (“CMD”) were intimated to both parties, advising of the date by which any written representations should be lodged. Said notification was served on the Respondent by Sheriff Officer on 1 June 2021. No representations were lodged by the Respondent.

3. A Case Management Discussion (“CMD”) took place by telephone conference call on 5 July 2021, attended by both Tribunal Members and the Applicant’s solicitor, Mr Dominic Coyle of Austin Lafferty solicitors. A detailed Note on the CMD prepared by the Legal Member who dealt with the CMD and a Direction, both dated 5 July 2021, were issued to parties after the CMD. The Tribunal continued the application to an evidential Hearing in order that further evidence could be presented to the Tribunal in terms of the application and to give the Respondent a further opportunity to take part in the proceedings and present any evidence. A Hearing was assigned for 6 September 2021 at 10am, to take place by telephone conference call. The Respondent was notified of same by the Tribunal by Recorded Delivery correspondence which the track and trace system confirms was delivered to the Respondent’s address on 3 August 2021.
4. Neither party responded to the Direction by providing details of any intended witnesses in advance of the Hearing. The Applicant’s solicitor responded to the Direction by lodging an Inventory of Productions, a copy of which was circulated to the Respondent. The Respondent did not respond to the Direction or lodge any documentation with the Tribunal prior to the Hearing.

The Hearing

5. The Hearing took place by telephone conference call on 6 September 2021 at 10am, although the commencement of the Hearing was delayed for 5 minutes to allow the Respondent an opportunity to attend but she did not. The Hearing was attended by both Tribunal Members and the Applicant’s solicitor, Mr Dominic Coyle of Austin Lafferty solicitors.
6. After introductions and introductory remarks by the Legal Member, the Legal Member made reference to the Direction issued after the CMD regarding the matter of witnesses. Mr Coyle confirmed that the Applicant was not in attendance and that he did not intend to call any witnesses to give evidence. He made reference to the Affidavits of the Applicant and Mrs Irene Gow or Paterson lodged as part of the Applicant’s Inventory of Productions, both dated 20 August 2021, and indicated that these constituted the evidence of the Applicant and his wife. The Legal Member advised that it was the same two Tribunal Members today as had attended the CMD so were familiar with the background to the application and had read through all the documentation lodged in support of the application on behalf of the Applicant in response to the CMD Note and Direction issued by the Tribunal after the CMD. Mr Coyle was asked to address the application, paying particular note to the issues identified by the Tribunal at the CMD on which they had requested further evidence.

7. Mr Coyle made reference to the documentation originally submitted in support of the application and the further documentation lodged in response to the Direction. In particular, he made reference to the Applicant's Affidavit (Item 1 of Inventory) which explains some more about the detailed circumstances of the Applicant's decision to let the Respondent, his daughter, live in the Property from December 2019 and why there was no tenancy agreement put in place. The Applicant's relationship with the Respondent was good at that time and he had no reason to think that this would change. Unfortunately, as detailed in the Affidavits of the Applicant and his new wife (Item 2 of Inventory) the Applicant's relationship with the Respondent is now non-existent, having gone sour. Mr Coyle made reference to the Rent Statement lodged with the application (item 10 of Inventory) which shows how the rent arrears have been calculated and that, at the time when the application was submitted, the rent arrears amounted to £5,300 as at March 2021. He also made reference to the communications between his firm and the Respondent (Items 5 and 11-14 inclusive of Inventory) which provide further detail and, in particular, show that the arrangement between the parties was for rent payments to be £400 per month, that the Respondent had only made two payments in July and August 2020 of £600 and £500 and the extent of the rent arrears. The Respondent has not contested any of this, either in her communications with the Applicant nor with Mr Coyle's firm.
8. Mr Coyle then answered questions from the Tribunal Members. The Legal Member asked about the statement of the Applicant in his Affidavit that he has estimated the rent arrears due as about £3000, whereas the sum claimed was £5,300. Mr Coyle explained that this must just be a miscalculation now as it was the Applicant who prepared the Rent Statement originally. He confirmed that the rent claimed is only the £5,300 arrears due as at March 2021 and that there has been no request to amend the application for a higher sum, although further rent arrears have accrued since then. Mr Coyle confirmed that he checked with the Applicant a few days ago that no further sums had been received from the Respondent since August 2020. He also confirmed that there has been no further communication from the Respondent with his firm since last year, including in the period between the CMD and Hearing. The Ordinary Member asked if Mr Coyle is aware of whether the Respondent is still living at the Property. Mr Coyle confirmed that the Applicant has driven past the Property and it appears still to be occupied.
9. Mr Coyle did not wish to add anything in summing up, other than to request that the Tribunal grant the payment order in the sum of £5,300 today.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent, who is the daughter of the Applicant, is the tenant of the Property by virtue of an informal tenancy arrangement which commenced on or around 31 December 2019 and in respect of which the rent is £400 per calendar month.

3. The only payments towards rent made by the Respondent were £600 in July 2020 and £500 in August 2020, with no payments received since.
4. The amount owing in rent arrears when this application was submitted to the Tribunal on 1 April 2021 was £5,300.
5. Further arrears have accrued since this application was submitted to the Tribunal.
6. No explanation has been given for the non-payment of rent by the Respondent, nor attempts to resolve the issue.
7. The Respondent has not submitted any written representations, nor sought time to pay, in respect of this application. The Respondent did not attend the CMD or the Hearing.
8. The sum of £5,300 is due and resting owing by the Respondent to the Applicant in respect of rent arrears incurred during the tenancy and has not been paid by the Respondent.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, the further documentation lodged prior to the Hearing in terms of the Tribunal's Direction and the oral representations made by the Applicant's solicitor at the CMD and Hearing. The Tribunal noted the terms of the Affidavits of the Applicant and his wife, Mrs Irene Gow or Paterson, both dated 20 August 2021, which constituted their evidence. The Tribunal noted that no representations had been made by the Respondent and that she did not attend either the CMD nor the Hearing, having been properly and timeously notified of both. The Tribunal noted that they had no evidence contradicting the position of the Applicant in respect of the rent arrears.
2. The Tribunal considered the evidence of the Applicant and his wife contained in the Affidavits to be both credible and reliable, being supported by the other documentation lodged in support of the application.
3. The Tribunal was satisfied from the evidence and other information before the Tribunal that the balance of the sum claimed in unpaid rent of £5,300 is due and resting owing by the Respondent and that an order for payment in that sum should accordingly be made.

Right of Appeal

In terms of Section 46 of the Tribunal (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.



Legal Member/Chair

6 September 2021
Date