



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

Chamber Ref: FTS/HPC/CV/22/3351

Re: Property at 45 Katrine Place, Irvine, North Ayrshire, KA12 9LU (“the Property”)

Parties:

Easton Property Limited, 2 Newfield Drive, Dundonald, South Ayrshire, KA2 9EW (“the Applicant”)

Ms Hollie Brown, 45 Katrine Place, Irvine, North Ayrshire, KA12 9LU (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatrige (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order for the amount of £ 8,968.02 by the Respondent to the Applicants should be granted.

A: Background

1. The application for an order for a payment order of £7,615 rent arrears under S 71 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) arising from a Private Residential Tenancy Agreement between the parties was made by the Applicant on 13 September 2022.
2. The following documents were lodged to support the application and are referred to for their terms and held to be incorporated herein:
 - a. Copy tenancy agreement between the parties over the property commencing on 9 May 2019.
 - b. Tenancy rent statement for the period from 9 May 2019 to 9 September 2022
 - c. Tenancy rent statement for the period up to 9 January.2023
 - d. Tenancy rent statement for the period op to 9 March 2023

- e. rent increase notice dated 25 January 2021.
- f. Authorisation letter dated 13 September 2022
- g. Email Lyn Thoms to Respondent re request for telephone call dated 24 February 2022
- h. Email 25 February 2022 from Respondent to Lyn Thoms with payment plan proposal
- i. Email 10 March 2022 from Lyn Thoms to Respondent accepting same
- j. Email Lyn Thoms to Respondent re rent increase notice dated 18 August 2021

- 3. On 20 December 2022 a Case Management Discussion (CMD) took place. The CMD note and directions issued are referred to for their terms.
- 4. On Friday 17 March 2023 the Respondent sent a 9 page document to the Tribunal acknowledging this had been lodged late.

B: The Hearing

- 5. On 20 March 2023 the hearing took place by teleconference. Ms Barclay appeared for the Applicant together with the witness Lyn Thoms. The Respondent Ms Brown also attended. The hearing was arranged for the conjoined applications for a payment order and an eviction order lodged by the Applicants and the evidence was heard in a conjoined hearing for both cases.

6. Preliminary Matters:

a) The legal member explained the purpose and format of the hearing. The legal member also explained that the first decision for the Tribunal would be whether or not to allow the documents sent by the Respondent on Friday 17 March 2023 to be introduced into the process. Both parties were referred to rule 22 (2) of the Rules of Procedure. Both parties were given the opportunity to make representations. The Respondent stated that she knew the documents were lodged late and that she had a lot going on with her health and interviews. She had not wanted to think about it. She had buried her head in the sand. She was going to go to the doctor about having a burnout and had tried to get her hands on a letter she wished to lodge and could not find. The documents on the email of Friday were all on her phone. She asked for the documents to be allowed to be lodged late.

b) Ms Barclay stated she was opposed to the documents to be allowed to be lodged. There was no time to react to the documents and to if necessary call other witnesses. She did not think the documents were particularly relevant.

c) After an adjournment the Tribunal decided not to allow the documents to be added to the process because the Respondent had not provided any evidence that there had been a reasonable excuse for the late lodging. She had been advised of the need to lodge documents at the CMD and in the directions and had ignored these. She had been aware of the date of the hearing and not taken reasonable steps to lodge the documents in time so that the Applicants would have had fair notice of the content. The Tribunal was satisfied that the documents had been in the Respondent's possession and that she had had access to these for weeks prior to the hearing and that she had simply waited until Friday to lodge these for a Monday morning hearing, thus leaving no time for the Applicants to

deal with the documents appropriately. There was no reasonable excuse for lodging the documents late and thus the Tribunal refused the request. The Tribunal had further considered the matter under the overriding objective stated in rule 2. Had the documents been allowed to be accepted this in all likelihood would have led to a delay and a postponement of the hearing. In all the circumstances the Tribunal saw no reason why the Respondent should be allowed to introduce the documents at this late stage.

d) The Tribunal was also advised that an up to date rent statement had been lodged by the Applicant on 13 March 2023. The clerk was able to verify that this had been the case but that for reasons unknown the administration had not sent this on to the Respondent and the Tribunal members. However, after discussion of the content of the rent statement and an update by both the Applicants and the Respondent of the payments made and received since the updated statement of 9 January 2023, the Tribunal noted that both parties agreed that since 9 January 2023 two payments of £425 Universal Credit and £33.49 arrears contributions had been received on 16 February 2023 and 16 March 2023 respectively and that thus there was agreement of this matter and it did not introduce new information the Respondent would not have been aware of.

7. Ms Brown's evidence:

- a) Ms Brown gave evidence first to allow the Tribunal and the Applicant to be fully aware of her position, which she had not put in writing as requested in the directions following the CMD.
- b) Her evidence was that she had agreed a rent of £425 verbally with Ms Easton on when she first viewed the property on 24 April 2019 together with her mother. She could have had her mother give evidence about this but because her mother had health issues she did not wish to put the additional pressure on her of giving evidence. Ms Easton understood that £425 was what she would receive in housing benefit (HB). The first two months no payments were made because that was how long it took for HB to be put in place. She did not receive HB in May, June and July 2022 because of a change in her employment situation but received it again afterwards and did not pass on the payments for rent from November and December 2022 and January 2023 although she had received the payments from DWP.
- c) She stated she had invested in the property working on the kitchen and garden, which would make up for the arrears and thinks she should be compensated for this. She stated she was a good tenant. She lives there with her two sons, aged 4 and 11. She has issues and finds it difficult to deal with mail. Initially she stated she also rented a commercial property from the Applicants in 2021 for a cafe. She later changed her evidence and stated this was in November 2020. She asked why they would rent her a commercial property if she had arrears in her rent.
- d) She stated she had suggested a payment of £200 per week to repay the arrears in February 2022 because she was desperate to keep her family home but this was unrealistic and she could not afford the payments. She would have promised anything at that stage as she panicked. She stated the landlords should have known that and that she was suicidal and depressed but did not state how the Applicants would have known that.

She had domestic issues and could not see her 11 year old son become homeless.

- e) She stated that the tenancy agreement was actually the one she signed in the office of the landlord in May 2019 and she just thought that the amount of rent stated in the tenancy agreement in clause 7 was "just legalities" for getting a house and did not think to challenge this. There were issues about the carpets and kitchen and she was pregnant at the time. She was excited to get the house and did not query the rent. If the rent really was £510 why would the landlord wait for years without evicting her. She confirmed having received an email with the rent increase notice. She stated she now thinks the landlords wanted to evict her so they can put up the rent for the property as this is what happened to someone she knows. She had not been aware that during Covid there were different rules about notice periods and evictions until she spoke to CHAP or the homelessness team. The Applicants had been nice to her. She agreed £510 would be a reasonable rent but she had told them she could only get £425.
- f) She stated she knew she had arrears, especially from the first two months after the tenancy started and when she paid £510 from August to October 2021 and in January 2022 this was to clear some of these arrears, not an acknowledgement that this was the rent due. She further stated that when she got the rent increase notice to £520 she again thought that was just legalities, like a gas safety check, and not a real notice of a rent increase. She did not think it was serious because of how nice the Applicants had been to her, for example when there was a problem with the ceiling and they trusted her to organise the repairs herself and repay her the money.
- g) She stated it was only when she got the Notice to Leave she challenged the rent amount. She stated that Ms Easton had come to her house with a handwritten rent statement and she queried it then and Ms Easton had told her she would adjust it and look into it, the amount of rent and that particular payments had not been shown on the handwritten statement,.
- h) She is now in touch with Woman's Aid and they will help her with sorting her finances. She was in a terrible financial situation not being able to afford her gas. She finds it hard to prioritise. She would now offer payments of £50 to £75 per month to clear the arrears as this would be realistic. This may be too little too late. She confirmed she did not get back to the landlords to say can she pay less than the £200. at the time. She stuck her head in the sand. She had now also contacted the Council about being re-housed but was just on a list.
- i) In her calculation, based on a rent of £425 a month, she would accept the arrears are £4,980 not the amount stated by the Applicant. She stated Lyn had said to her she would re-do the rent statement and had brought her a paper one to the door showing the £425 rent only. Then she did not hear anything further. When asked by the legal member why she had not raised this before she stated she has memory problems.
- j) She said she did not get the Notice to Leave emailed and her email of 25 February 2022 referred to an email from Lyn on the 24th.
- k) The landlord should have taken more steps to help her and should have done more to allow her to pay the arrears.

8. Evidence on behalf of the Applicants:

- a) Ms Barclay stated the lease reflected the agreed rent position. The property is a 3 bedroom house and the £510 rent would have been the normal rent for that type of property at the time and the Applicants would not have accepted £425 rent for that type of house. There had been little effort of the Respondent to address the arrears and the Applicants had to ask for direct payments from Universal Credit (UC) from the DWP, which were now being received.
- b) Ms Thoms was the main point of contact and after arrears reach a certain level the other department would then refer the case to her department and she would issue a Notice to Leave and the PARS letters etc. She never had direct communications with the Respondent but had sent the email with the PARS letter and the Notice to Leave to the Respondent on 24 February 2022. The Respondent had replied the next day with the payment plan proposal and she thought that this was likely in reaction to the enclosure of her own email which stated a payment plan may be a step the Respondent wished to take and the email from the Respondent referred to "emails" plural. If the payment plan had been kept by the Respondent then the Notice to Leave would have expired and nothing else would have happened. As it was not kept, the matter was then referred to the Tribunal.
- c) Ms Thoms explained that she was employed as office manager and had worked for the Applicants for about 20 years. She did some Credit Control and was the personal contact for tenants. There is also a commercial letting arm to the organisation and the private rental part dealt with about 280 houses.
- d) All rent increase notices are sent at the same time for all properties after the directors make a decision to increase rent. She sent out all the notices. The new rent applied from May 2021.
- e) The rent charges are taken from the tenancy agreement when a new tenancy is set up. There was no information this would be any different for this lease.
- f) When the tenant offered to pay £510 in cash in August 2021 she did not query that because she would have just looked at the lease. After the 3x£510 payments the arrears worsened. There was a lot of telephone messages left for the tenant but she could not confirm exactly when these would have been. Emails had not been replied to, calls not returned. The initial UC request for direct payment was rejected, the one in January 2023 was granted. Although she had tried to work with the tenant, there were no telephone contacts after the Notice to Leave. The tenant had never disputed the rent being £510.
- g) She stated she thought the tenant was working when she offered the £200 and she did not know the tenant may have been struggling.
- h) All accounts are dealt with individually and there was no specific amount after which a notice would be served. It would be if payments stopped for example if an agreement was not kept. She had emailed the Respondent on 12. and 21 April 2022 but received no response.
- i) During Covid as long as tenants paid anything they would not have chased up payments and tried to evict tenants. In this case the arrears were now almost £9,000 and an eviction would be reasonable.

- j) Nobody ever approached them to say the tenant was a vulnerable person and she did not recall the tenant had ever told them about a breakdown.
- k) She stated she does not drive and never went to the tenant's property with a handwritten rent statement. She does not know if Ms Easton ever did. To her knowledge there was only one payment plan set up, that was the one offered by the Respondent.

C: Findings in Fact:

Based on the evidence lodged and the representations of the participants at the CMD and the hearing the Tribunal makes the following findings in fact:

- a) The tenancy is a Private Residential Tenancy over the property which started on 9 May 2019.
- b) The parties were the landlords and tenant of said Tenancy Agreement.
- c) The tenancy is ongoing.
- d) Payments of £425, £510 and £200 respectively were made as shown in the rent statement up to and including 9 January 2023 with two additional payments having been received of £458.49 on 16 February and 16 March 2023.
- e) No payment were made May and June 2019..
- f) No payments were made in November and December 2021 and in May, June and July 2022
- g) No payments were made in November and December 2022 and January 2023.
- h) Previous payment plans offered by the Respondent had not been adhered to.
- i) No time to pay direction application has been made.
- j) The monthly rent was initially £510 per calendar month payable in advance on the 9th day of each month (clause 7).
- k) The monthly rent increased to £520 from 9 May 2021 by the rent increase notice dated 21 January 2021 served on the Respondent
- l) Rent arrears of £8,968.02 accrued to the date of the hearing on 20 March 2023 and remains outstanding.

D: Reasons for decision

- a) The Tribunal makes its findings on the civil standard of proof, which is the balance of probability. The Tribunal carefully considered the documentary evidence and the oral evidence given by all participants.
- b) It was not disputed that the parties entered into the Private Residential Tenancy which was evidenced by the tenancy agreement signed by both parties and dated 9 May 2019. The payments made were also not in dispute. The Tribunal is thus satisfied that the Respondent had entered into a Private Residential Tenancy Agreement with the Applicant for the property.
- c) The Respondent challenged the amount of rent due as stated in the tenancy agreement. The rent is clearly stated as £510 per calendar month in clause 7 of the tenancy agreement and the Respondent agreed that she

had signed the lease with that amount stated as the rent. She stated that she thought the amount was just "a legality", as was the rent increase, and she never queried the amount until she 2022 because she had verbally agreed an amount of £425 of rent with one of the directors of the Applicant organisation. She provided no evidence for this. The witness she had stated could have spoken to this agreement was not produced.

- d) The Tribunal noted that payments of £510 had been made on 4 occasions as shown in the rent statements. Although the Respondent stated that was just a random amount to clear some of the arrears, the Tribunal considered that it was highly unlikely that a random amount would have been chosen for these payments in the absence of any payment plan to that effect. The Respondent in her email of 25 February 2022 had also referred to payments of £510 plus additional payments of £200 per week. Again, the Tribunal considered that this was another indication that the rent had been agreed at £510 rather than £425 per month.
- e) Both Ms Barclay and the Respondent stated that £510 would have been a reasonable rent for the type of property and Ms Barclay stated the organisation would not have accepted a significantly lower rent. The Tribunal further noted that although the Respondent repeatedly referred to it being unlikely that she would have not been evicted sooner if the rent was £510 per month, a degree of flexibility had been explained by Ms Barclay and Ms Thoms due to the Covid situation, during which a significant amount of the arrears accrued.
- f) On balance, the Tribunal did not accept the Respondent's position regarding a verbal agreement of a rent of £425 per month for a 3 bedroom house having been made without that having been reflected in any way in correspondence or the tenancy agreement.
- g) The Tribunal also did not believe that the Respondent would have considered one of the elementary and essential parts of the tenancy agreement, the amount of rent stated in the written tenancy agreement, to be something she would just ignore and sign although she stated it was not accurate.
- h) The Tribunal further was satisfied that the Respondent received the rent increase notice and would have been aware that the rent increased to £520 from May 2021 onwards. Although both parties later in the emails about the payment proposal referred to £510 per month and additional payments, Ms Thoms had explained to the Tribunal's satisfaction that she would have looked at the tenancy agreement when she agreed to that payment proposal and had not checked for any increase. The Tribunal considered that this was a likely explanation and did not change the clear rent increase notice sent to the Respondent. The Tribunal did not consider it likely that the Respondent was not aware of the rent amount in particular after the rent increase notice was issued and considered that it would be unlikely that a tenant would ignore the rent stated in the tenancy

agreement and the rent increase notice without raising this with the landlord if they thought that amount was incorrect.

- i) At the hearing the Respondent for the first time stated that she had brought this to the attention of Ms Thoms and Ms Easton when they both came both to her property with handwritten rent statements. She had not mentioned this before and despite having been asked to make all relevant representations by 20 January 2023 had not done so in answer to the direction issued by the Tribunal after the CMD. She had not produced any of the handwritten statements she stated had been taken to her. She had not produced any emails or texts, letters or other documents which would have supported her evidence that she challenged the rent amount.
- j) The Tribunal believed Ms Thoms' evidence that she had never gone to the Respondent's property because she does not drive. The Tribunal also considered it highly unlikely that in a professional organisation with 280 properties and an electronic rent and accounts system a director of the organisation would have drawn up and handed over a handwritten rent statement and found it equally unlikely that the office manager would have done so.
- k) On balance and taking all evidence into account, the Tribunal was satisfied that the rent was initially £510 per month, was increased to £520 per month from 9 May 2021 and that at the time of the hearing the amount of rent arrears outstanding was £8,968.02 pence. Given that a higher amount, £9,246,51 had been intimated as the up to date rent amount in the email of the Applicants to the Tribunal well in advance of the hearing and that the payment information after the rent statement up to and including 9 January 2023 had not been disputed, the Tribunal considered that the Applicant should be allowed to amend the application to the up to date amount. The Respondent was aware of the payments which had been made up to and including 16 March 2023 and thus had fair notice of the change in the amount. The application in part 5 c explicitly stated that the amount stated on the application was the current, not the final amount of arrears. In the circumstances the Tribunal considered that a payment order for the up to date rent arrears amount of £8,968.02 could and should be granted.
- l) The Tribunal noted that the Respondent had mentioned at the hearing she would offer payment of the arrears at the rate of between £50 and £75 per month. No formal request for payment by instalments was made. Even if the Tribunal had received a time to pay direction application with that proposal it would not have considered it reasonable to make an order of payment by instalments of £75 per month given that at this rate the amount would not be cleared within 2 years.

E: Decision:

The Tribunal grants the order for payment of the amount of £8,968.02 by the Respondent to the Applicants. The decision was unanimous.

F: 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.

Petra Hennig-McFatrige

21 March 2023

Legal Member/Chair

Date