



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

Chamber Ref: FTS/HPC/CV/21/2491

Re: Property at 10 Norway Gardens, Dunfermline, Fife, KY11 8JW (“the Property”)

Parties:

Ms Margretta Chambers, 182 Carginagh Road, Kilkeel, Northern Ireland, BT34 4QA (“the Applicant”)

Mr James David O'Donnell, 10 Norway Gardens, Dunfermline, Fife, KY11 8JW (“the Respondent”)

Tribunal Members:

Sarah O'Neill (Legal 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 of the sum of £7750 should be granted in favour of the applicant.

Background

1. An application was received on 11 October 2021 from the applicant's representative, Martin and Co, Dunfermline, for a payment order brought in terms of rule 111 (Application for civil proceedings in relation to a private residential tenancy) of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”).
2. The applicant was seeking payment of rent arrears of £5800 from the respondent in relation to the property, being the amount of arrears as at the

date the application form was submitted. Attached to the application form were the following:

- i) copy private residential tenancy agreement between the parties dated 31 July 2020
 - ii) rent statement dated 7 October 2021, showing the outstanding rent arrears to be £5800
 - iii) Copy notice to leave sent to the respondent dated 1 June 2021, citing ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.
3. The application was accepted by the tribunal for determination on 8 November 2021.
 4. Emails were received from the applicant's representative on 12 November and 1 December 2021, each enclosing updated rent statements and requesting an amendment to increase the sum claimed to £6450 and £7100 respectively.

The first case management discussion

5. A case management discussion (CMD) was held by remote teleconference call on 16 December 2021. The applicant was represented by Ms Donna Mackenzie, Ms Sarah Scott and Ms Carol Reid of Martin and Co. The respondent was present on the call and represented himself.
6. The respondent admitted that he owed the rent arrears of £7100. He said that he wanted to resolve matters and pay back the money which he owed to the applicant. It was apparent from what the respondent said that he wished to ask the tribunal to make an arrangement for the money to be repaid in instalments. When asked by the tribunal chairperson why he had not completed a time to pay direction application, he indicated that he was unaware that he could have made such an application. He had taken advice from the CAB, but said that they had not advised him that this was an option that was open to him.
7. The tribunal was satisfied that the two requests to amend the sum claimed had been submitted at least 14 days prior to the CMD, as required in terms of rule 14A of the 2017 rules. When asked by the tribunal whether he wished to say anything in relation to the amendment requests, the respondent said he did not. The tribunal therefore consented to the two amendment requests to increase the sum claimed.

8. While the tribunal was therefore in a position to grant an order for the sum sought, it appeared that the respondent wished to be given the opportunity to apply to the tribunal for a time to pay direction.
9. The tribunal considered that in the interests of justice the respondent should be given an opportunity to submit a time to pay application to the tribunal. The tribunal chairperson made clear to the respondent, however, that any time to pay application was unlikely to be accepted unless he was able to pay a substantial amount each month in addition to his monthly rent payments of £650. She suggested that he may wish to seek further advice from the CAB or another advice agency.
10. The tribunal therefore decided to postpone the CMD to a later date, in order to allow:
 - i. the respondent time to take further advice and to submit his time to pay application;
 - ii. the applicant time to set out her written response to the time to pay application
 - iii. the tribunal time to consider the application and any response received from the applicant.
11. The tribunal issued a direction to the respondent on 16 December 2021, directing him to submit a time to pay direction application no later than 6 January 2022. No response was received from the respondent prior to the rescheduled CMD on 20 January 2022.
12. On 6 January 2022, an email was received from the applicant's representative requesting to amend the application to increase the sum claimed to £7750, supported by an updated rent statement showing this sum to be due as at 4 January 2022.

The second case management discussion

13. The tribunal held a second case management discussion on 20 January 2022. The applicant was represented by Ms Scott and Ms Reid of Martin and Co. The respondent was not present on the call and was not represented.
14. The tribunal noted that the respondent had given consent for communications to be sent to him by email during the previous CMD on 16 December 2021. The respondent had been sent notification of the date and time of the CMD by email on 22 December 2021. He had also been sent the note of the previous CMD and the tribunal's direction of 16 December 2021 by email on 20 December 2021.

15. The tribunal was therefore satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a CMD had been duly complied with. It therefore proceeded with the CMD in the absence of the respondent.

16. The applicant's representatives asked the tribunal to grant an order in favour of the applicant for £7750. They confirmed that no further payments had been made by the respondent towards his rent arrears. They said that they had attempted to contact him following the first CMD, but there had been no response from him.

17. The tribunal noted that the respondent had admitted at the CMD on 16 December 2021 that he owed £7100 in rental payments. It was satisfied that the request of 6 January 2022 to amend the sum claimed to £7750 had been submitted at least 14 days prior to the CMD, as required in terms of rule 14A of the 2017 rules. The tribunal therefore consented to the amendment request to increase the sum claimed

Findings in fact

18. The tribunal made the following findings in fact:

- The private residential tenancy between the parties commenced on 4 August 2020.
- The rent payable under the tenancy agreement was £650 per month, payable in advance on the 4th of each month.
- As at the date of the second CMD, the respondent owed the applicant the sum of £7750 in rent arrears.

Reasons for decision

On the basis of all the evidence before it, the tribunal was satisfied that the applicant owed £7750 to the applicant as at the date of the second CMD. The tribunal therefore decided to make an order for payment by the respondent to the applicant of that sum.

Decision

The tribunal grants an order for payment by the respondent to the applicant for the sum of £7750.

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.

S. O

20/01/2022

Legal Member/Chair

Date