



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/21/3212

Re: Property at 30 Lethen Walk, Portlethen, Aberdeen, AB12 4TX (“the Property”)

Parties:

Ms Ruth Brown, 5 The Moorings, Willows, Windsor, Berkshire, SL4 5TG (“the Applicant”)

Ms Sharon Bell, 30 Lethen Walk, Portlethen, Aberdeen, AB12 4TX (“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 £3519 should be granted in favour of the applicant.

Background

1. An application was received from the applicant on 23 December 2021 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”). Attached to the application form was a copy tenancy agreement (entitled ‘assured shorthold tenancy agreement’) between the parties relating to the property, which commenced on 13 September 2021.
2. The applicant was seeking payment of rent arrears from the respondent in relation to the property. The amount of arrears sought was not stated on the

application form. The tribunal administration wrote to the applicant on 28 January 2022 asking her to confirm the sum she was seeking, and to provide evidence of this, such as a rent statement.

3. A response was received from the applicant by email on 30 January 2022. In this email, the applicant confirmed that the rent arrears due as at 11 January 2022 totalled £2300. Attached to her response was a copy text message to the respondent dated 11 December 2021, advising her that £1150 rent was due for the months of October and November. Also attached were emails from the applicant to the respondent dated 30 October 2021, 6 November 2021, 22 November 2021 and 11 January 2022. Each of these emails set out the amount of rent arrears due as at the date of the email (namely £575, £575, £1150 and £2300 respectively). All of these emails, other than that dated 6 November 2021, also referred to clause 8 of the tenancy agreement [which should have in fact referred to clause 9], which stated that interest may be charged in relation to late payment of rent.
4. The amount sought in the application was therefore £2300. The application was accepted by the tribunal for determination on 15 February 2022.
5. The application papers, together with notice of the case management discussion (CMD) scheduled for 26 April 2022, were served on the respondent by sheriff officer on behalf of the tribunal on 8 March 2022. No written representations or time to pay application were received from the respondent prior to the CMD.
6. A direction was issued by the tribunal on 22 March 2022, stating that the tribunal would consider a claim for £2300 at the case management discussion (CMD) on 26 April 2022, and notifying the applicant that if she wished the tribunal to consider making an order for a higher amount, she may request to amend the application in terms of rule 14A of the 2017 rules.
7. An email was received from the applicant on 29 March 2022, stating that the amount due as at 30 April 2022 would be £3889.87, comprising rent arrears of £3795 plus 4% pro rata interest of £94.87. She enclosed an email to the respondent of the same date, advising her that this amount would be owed at 30 April 2022.

The CMD

8. A CMD was held by remote teleconference call on 26 April 2022. The applicant was present on the teleconference call and represented herself. The respondent was not present and was not represented. The tribunal delayed the start of the discussion by 10 minutes, in case the respondent had been

detained. She did not appear, however, and no telephone calls or messages had been received from her. The tribunal was 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.

9. The applicant confirmed that to the best of her knowledge, the respondent was still residing at the property. It became apparent early in the proceedings that the applicant had understood that the tribunal would be considering both the rule 111 application for a payment order and the eviction of the respondent. The applicant confirmed that she had only submitted one application to the tribunal, but said that she had thought this covered both issues. The tribunal chairperson pointed out that the letter of 28 January 2022 to the applicant from the tribunal administration advised her (at point 3) that, if by stating in her application form that she wished to move into the property, she was indicating that she was also seeking an eviction order, she would need to give the respondent appropriate notice first and make a separate application to the tribunal under the appropriate rule.
10. The applicant confirmed that she had not picked up this point from the letter. She confirmed that she still wished to proceed with the present application for a payment order.
11. She confirmed that the tenancy agreement between the parties had commenced on 13 September 2021. The tribunal chairperson noted that the tenancy agreement which had been provided included a final page which appeared to have been signed by the parties, but was illegible. A further unsigned copy of that page had also been attached to the application. The applicant confirmed that the page with the signatures had been on paper only, and she did not have a better copy of it. During the CMD, however, she was able to produce by email a draft copy of the tenancy agreement which had been signed and dated by the respondent on 1 September 2021.
12. The applicant said that the respondent had paid the first month's rent at the beginning of the tenancy but had made no further payments since then. It had been difficult to contact the respondent, who had indicated several times that she was in contact with the authorities regarding benefits and had said on various occasions since October 2021 that she would pay the rent but had never done so.
13. The applicant confirmed that she was seeking a payment order for £3889.87, as set out in her email to the tribunal of 29 March 2022. She confirmed that

this email was intended to be an amendment request under rule 14A of the 2017 rules, seeking to increase the sum sought to that amount.

14. The tribunal noted that the amendment request had been received, and copied to the respondent, more than 14 days prior to the CMD, as required in terms of rule 14A of the 2017 rules. The tribunal therefore consented to the amendment, to the extent that it allowed the application to be amended to include the sum due as at 29 March 2022, which was the date of the amendment request. As at that date, the last payment owed was the payment due on 13 March 2022 for the period to 12 April 2022. The tribunal could not consider payment of a sum which had not become due either at the date of the amendment request or at the date of the CMD.
15. The tribunal therefore allowed an amendment to the application to seek the sum of £3450, comprising the rent payments which had been due on the 13th of each month for the 6 months from October 2021 until March 2022.
16. The tribunal also noted that the applicant wished to claim contractual interest on the sum due at 4%, as provided for in clause 9 of the tenancy agreement. The tribunal chairperson asked how the applicant had calculated the interest figure stated in her email of 29 March 2022. The applicant was unsure about this, and the tribunal adjourned the CMD briefly to allow her to provide further details of the interest payment she wished to claim.
17. Following the adjournment, the applicant confirmed that she wished to claim a total of £69 interest in relation to the amended figure of £3450. She had calculated this as follows:
 - Rent due from 13th October to 12th April inclusive: £3,450.00
 - £3,450.00 x 4% annualised interest rate equals £138.00
 - £138 pro rata over the 6 months equals £69.00

Findings in fact

18. The tribunal made the following findings in fact:
 - The applicant is the owner and registered landlord of the property.
 - The tenancy between the parties was a private residential tenancy, as it met the requirements of section 1 of the 2016 Act, regardless of the title stated on the tenancy agreement.
 - The private residential tenancy between the parties commenced on 13 September 2021.

- The rent payable under the tenancy agreement was £575 per month, payable in advance on the 13th day of each month.
- The tenancy agreement stated at clause 9: “The tenant will be charged an additional amount of 4% of the Rent for any late payment of the Rent.”
- The applicant had sent numerous emails to the respondent advising her that she was in rent arrears.
- As at the date of the CMD, the respondent owed the applicant the sum of £3450 in rent arrears.

Reasons for decision

19. On the basis of all the evidence before it, the tribunal was satisfied that the respondent owed £3450 in rent to the applicant as at the date of the CMD, and that she had been notified that this sum was due by the applicant.

20. The tribunal was also satisfied that the respondent was bound to pay contractual interest on unpaid rent at the rate of 4% per annum, and that the amount of interest due as at the date of the CMD was £69. The respondent had also been notified by the applicant that she intended to seek payment of interest in terms of clause 9 of the tenancy agreement.

21. The tribunal therefore decided to make an order for payment by the respondent to the applicant of £3519, comprising £3450 in rent arrears and £69 in accrued contractual interest on that sum.

Decision

The tribunal grants an order for payment by the respondent to the applicant for the sum of £3519.

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

26 April 2022
Date