



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)

Chamber Ref: FTS/HPC/CV/23/2284

Re: Property at 43 Muirside Drive, Tranent, EH33 2JT (“the Property”)

Parties:

Mr Niel Jorgensen, c/o Matrix Property Management Limited, 132 St Stephen Street, Edinburgh, EH3 5AA (“the Applicant”)

Ms Cherelle Knox, Mr Mark Ure, Mr Simon Ure, 43 Muirside Drive, Tranent, EH33 2JT; 43 Muirside Drive, Tranent, EH33 2JT; 21 Hillside Terrace, Westquarter, Falkirk, FK2 9SH (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Angus Lamont (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 £5,513. 41 should be made in favour of the Applicant, together with interest thereon.

Background

1. By application received on 10 July 2023, the Applicant applied to the Tribunal for a payment order in respect of rent arrears in the sum of £4,614.96. Supporting documentation including a copy of the tenancy agreement and a statement of rent account were also submitted. A separate application (FTS/HPC/EV/23/2284) was submitted together with this application in respect of an eviction order sought against the First and Second Respondents who are joint tenants and both applications are being dealt with together.

2. On 29 August 2023, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. On 11 October 2023, a copy of the application and supporting documentation was served on all Respondents by Sheriff Officer. Parties were notified of the date, time and location of the Case Management Discussion (“CMD”) and notified that any written representations in respect of the application should be submitted to the Tribunal by 30 October 2023. Written representations were received from the First Respondent, Ms Cherelle Knox, by email on 23 October 2023. No representations were received from the Second or Third Respondents, the Third Respondent being Guarantor in respect of the tenancy.
4. On 1 November 2023, the Applicant’s representative emailed the Tribunal with some written submissions in response to the representations lodged by Ms Knox, an updated statement of rent account and applying for an increase in the sum sought in respect of rent arrears owing to £5,513.41.

Case Management Discussion

5. The application called before the Tribunal for a CMD on 14 November 2023 at 10am. In attendance were Mr Adam Gardiner, Solicitor, of Messrs Lindsays, solicitors on behalf of the Applicant and Ms Kaytlin Irvine, also of Lindsays, as an observer only. The Legal Member delayed the commencement of the CMD for around 10 minutes to give an opportunity for any of the Respondents to join the CMD late but they did not do so.
6. Following introductions and introductory remarks by the Legal Member, Mr Gardiner was asked to address the application. The written representations from the Respondent, Ms Knox were also referred to and Mr Gardiner was also asked to comment on those. Mr Gardiner made reference to the supporting documentation lodged with the application and subsequently on behalf of the Applicant and confirmed that the arrears now amount to £5,513.41. He stated that it can be seen from the rent statement produced that there is a long history of rent arrears but that they appeared to become more significant from June 2020 when the Applicant had increased the monthly rent from £670 to £820. There has been no corresponding increase in the rent payments being received by way of Ms Knox’s benefits which have always been paid directly to the Applicant, at the Respondent’s request. The arrears have now reached an unmanageable level and this is the reason that an eviction order is being sought in the separate application. Mr Gardiner is aware that Ms Knox is stating in her representations that she was unaware that her rent had been put up. He made reference to the letter dated 20 April 2020 sent by the Applicant regarding the rent increase and explained that this was sent personally by the Applicant by ordinary post so there is no proof of posting that can be produced. However, he stated that this process for increasing the rent is in accordance with the terms of the lease and made the point that Ms Knox has, by her own admission, been aware of the rent increase and the rent arrears situation since at least June 2022 and has failed since then to do anything to address it. She has stated in

her representations that she can inform the benefits authorities of a rent increase to increase the amount being paid by way of benefits but appears not to have done so as the payments being made into the rent account have not increased. The Applicant cannot resolve this matter with the benefits authorities directly as the tenant has to do that themselves. Mr Gardiner stated that it is clear from Ms Knox's representations that she does not dispute that the full rent is not being met and has not stated any clear defence to the matter. He stated that Ms Knox's comments regarding the alleged repair issues affecting the Property are not relevant here as she has not claimed to be withholding rent for this reason nor followed the proper processes for retention of rent or seeking an abatement of rent. Nor does she appear to have sought assistance from the Tribunal by way of a Repairs application. In his view, Ms Knox has been on notice for over a year at least regarding the level of arrears and that the Applicant was taking action but has failed to address the matter or provide any explanation for her failure to do so. He is not aware of her contacting the Applicant directly or engaging with him regarding the arrears and nor has there been any contact from the Second Respondent, Mr Mark Ure, the joint tenant, nor the Third Respondent, Mr Simon Ure, the Guarantor, in respect of the arrears. Mr Mark Ure is believed no longer to be residing in the Property and Mr Simon Ure is understood to be his father. Mr Gardiner confirmed that, in terms of the tenancy and the separate guarantee, liability in respect of the rent is joint and several and this is why the application has been made against all three Respondents. He asked the Tribunal to grant the payment order in the increased sum sought today. As to the interest and late payment charges that had originally been sought in addition to the rent arrears, Mr Gardiner clarified that the rent arrears themselves amount to the increased sum sought of £5,513.41, that the late payment charges are no longer being sought but that interest at the rate of 8% per annum is still sought in terms of the application. Mr Gardiner submitted that the rate of 8% is the contractual rate of interest specified in terms of the tenancy agreement.

7. In response to questions from the Tribunal Members regarding correspondence or other contact between the parties concerning the arrears, Mr Gardiner advised that some communications have been lodged with the Tribunal papers. He referred to letters dated 24 June 2022 and 23 March 2023 from the Applicant's agents and an email from the Applicant himself to Ms Knox dated June 2022 which she refers to in her representations too. He explained that there have also been three AT6s served on the Respondent in connection with the separate eviction proceedings, bringing the matter to the attention of the First and Second Respondents. The Applicant had thought from his communications with Ms Knox around June 2022 that there was going to be a possible resolution to the rent arrears situation but this did not happen. Mr Gardiner advised that he was not aware of any steps taken by the Applicant or his agents at an earlier stage regarding the historical rent arrears. Nor was he aware of whether a separate letter increasing the rent from June 2020 had been sent by the Applicant to the Second Respondent, Mr Ure, at the same time as the letter produced to the Tribunal addressed to Ms Knox. He did not think that the Respondent would have routinely been issued with copies of the rent account but stated that the correspondence mentioned did advise of the levels of arrears at the relevant times. As to the Respondent's circumstances, Mr

Gardiner advised that he is not aware of the financial circumstances of the Second or Third Respondent and only knows the financial circumstances of Ms Knox in terms of what she has included in her representations to the Tribunal. She refers to Mr Ure as being her former partner and to having two children living with her but Mr Gardiner does not know their ages or details. He does not know if she is working but appears to have limited income, given the terms of her representations and the fact that she has been in receipt of housing benefit throughout the tenancy. It was noted by the Tribunal that the First Respondent had indicated in her representations that the most she could afford would be around £20 per week towards the arrears and she appeared to concede that this would have little impact on the level of the arrears. Mr Gardiner confirmed that this amount would not be acceptable to the Applicant, given the level of arrears and time it would take to clear this debt. He invited the Tribunal to grant a payment order today in the increased sum sought.

8. The Tribunal adjourned briefly to consider matters and, on re-convening, the Legal Member advised that the Tribunal had decided that it was appropriate for the payment order sought to be granted today. Mr Gardiner and Ms Irvine were thanked for their attendance and the CMD concluded.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The First and Second Respondents are the joint tenants of the Property by virtue of a short assured tenancy which commenced on 1 August 2013 and is ongoing.
3. The First Respondent still occupies the Property.
4. The Third Respondent is the Guarantor in respect of the tenancy, by virtue of a Guarantee Agreement for Residential Tenancies between the third Respondent and the Applicant dated 29 July 2013.
5. The rent in terms of the lease was initially £650 per calendar month which was increased during the tenancy, most recently, as from 1 June 2020, to £820 per calendar month.
6. There has been a pattern of rent arrears occurring throughout the tenancy but rent arrears have particularly increased since June 2020 as the rental payments have not risen to reflect the increase in rent.
7. Payments towards rent are continuing to be made directly to the Applicant from the First Respondent's Housing Benefit at the rate of around £670 per month.
8. The rent arrears owing as at 1 November 2023 amount to £5,513.41.

9. The Respondent has been called upon to make payment of the rent arrears but has failed to do so.
10. The sum of £5,513.41 is due and resting owing by the Respondent (jointly and severally) to the Applicant in respect of rent arrears incurred during the tenancy.

Reasons for Decision

1. The Tribunal considered all of the background papers, including the application and supporting documentation and the oral submissions made by the Applicant's representative at the CMD. The First Respondent had submitted written representations to the Tribunal but did not attend the CMD, having been properly and timeously notified of same. The Second and Third Respondents did not submit written representations or attend the CMD, having been properly and timeously notified of same. The Tribunal noted the terms of the First Respondent's representations and queried the Applicant's agent in relation to the various issues she had raised.
2. The Tribunal was satisfied that the application on behalf of the Applicant to increase the sum sought had been made timeously and had been notified to the Respondent in terms of the Regulations. Accordingly, the Tribunal permitted said amendment to be made.
3. The Tribunal considered the issues raised by the First Respondent in her representations, particularly that she claimed not to have been aware of the rent increase which had been applied from June 2020 until June 2022. However, the Tribunal noted the terms of the copy letter from the Applicant addressed to the Respondent and dated 20 April 2020 regarding the rent increase which had been produced on behalf of the Applicant in response to the First Respondent's representations. The Tribunal also noted the terms of clause 7 of the tenancy agreement setting out the process for rent increases which, on the face of it, had been complied with here by the Applicant. The Tribunal considered that, even if the First Respondent had not known about the rent increase prior to June 2022, she had, by her own admission, known about it and the extent of the arrears since then but appeared not to have taken steps to address the arrears and Housing Benefit situation. As to the repairs issues raised by the First Respondent, the Tribunal agreed with the Applicant's agent's submissions that this was a separate matter to the rent arrears as there was no assertion by the First Respondent that the arrears have arisen or partly arisen as a consequence of her formally withholding rent due to repair issues. As the First Respondent had not attended the CMD, the Tribunal had been unable to explore these issues in more detail with her. The Second and Third Respondents appear never to have engaged with Applicant or his agents in respect of the rent arrears and had not entered into the Tribunal process nor opposed the application.
4. The Tribunal concluded that, in the circumstances, the application does not require to go to an Evidential Hearing and that an order could properly be made at the CMD today.

5. The Tribunal was satisfied that the sum of £5,513. 41 in unpaid rent is due and resting owing by the Respondent in terms of this application and that an order for payment in that sum should accordingly be made. Having noted the terms of clause 6 of the tenancy agreement, the Tribunal determined that 8% was the contractual rate of interest the Applicant was entitled to charge on rent payments due and accordingly the appropriate rate to be applied to the principal sum here from the date of the order until payment.

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.

N Weir

Legal Member/Chair

14 November 2023

Date