



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/23/1929

Re: Property at Christchurch Hall, 60 Main Street, Bathgate, EH48 3RJ (“the Property”)

Parties:

Mrs Magdolna Dobo, 2119 Pecel, Isaszegl UT 78, Hungary (“the Applicant”)

Mr Richard Roberts, Christchurch Hall, 60 Main Street, Bathgate, EH48 3RJ (“the Respondent”)

Tribunal Members:

Nairn Young (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

- Background
1. This is an application for an order for payment of arrears of rent, alleged to be owed by the Respondent to the Applicant, in terms of a private residential tenancy agreement. It called for a case management discussion (‘CMD’) at 10am on 20 November 2023, by teleconference. The Applicant was on the call in-person and was represented by Ms Wooley of Bannatyne Kirkwood France & Co., solicitors. The Respondent was not on the call and was not represented. The commencement of the CMD was delayed by 10 minutes to allow for any technical difficulty he may have been experiencing, but there remained no contact from him.

2. The matter had previously called for a CMD on 1 September 2023, conjoined with an application for an eviction order, on the grounds of rent arrears (FTS/HPC/EV/23/1928). In advance of that CMD, the Respondent's daughter had been in touch with the Tribunal indicating that she had discussed the applications with her father, that he was in hospital in England, and that he expected to be returned home in November or December, at which point he would pay the arrears. No appearance was made at the CMD on the part of the Respondent. The Tribunal made a direction in this case requiring written submissions from the Respondent on the application; and, in the conjoined case, among other things, providing evidence of his being in hospital and his prognosis, and his ability to repay the arrears. The Tribunal also indicated that it considered the Respondent's daughter was acting as his representative, in order to allow her to make representations on his behalf and receive any further communication from the Tribunal or the Applicant.
3. A further email was received on 25 September 2023, from the Respondent's daughter, suggesting that it would not be possible for her to get any documentation from medical professionals or others involved in her father's case in the timescale stipulated. She indicated it may take 4 to 6 weeks from then to get this. Nothing of the sort has yet been forwarded to the Tribunal.
4. Other points were raised in this email, relating only to the conjoined eviction case. It appeared from the narrative set out in it that the Respondent accepts that he is in arrears to the amount sought.
5. There was some further email communication from the Respondent's daughter restating some of the points already raised. On 16 October 2023, she emailed the Tribunal indicating that she was attempting to get the day off work to appear at the CMD on 20 November 2023; but that, if that were not possible, her sister would instead phone in. She indicated that evidence of her father's medical situation had been sought and would be available within 28 days.

6. On 6 November 2023, an application to amend the sum sought in the application to £14,400 was made by the Applicant. This was forwarded to the Respondent's daughter, who acknowledged receipt and stated she had forwarded it to her father, but made no objection to it being granted. No objection has been received since that time, either.
7. The Tribunal considered that the Respondent had been given ample opportunity to engage with the Tribunal in a meaningful way in regard to the application, but he had not done so. It had not been presented with any concrete evidence to support the suggestion that he was not able to do this. The Respondent's daughter's communication, while effusive regarding details of little real relevance to the case, was evasive in regard to those matters of most central importance: and in particular, the information requested in the directions in this and the conjoined case. The position being set forth was fundamentally not credible. The Tribunal was being told that the Respondent was so ill that he could not address application, or arrange to make any payment of rent (and had been for almost a year); but, also, that he was being prepared for discharge from hospital within the next month or so, when full payment would be made. Having found that explanation to be incredible, it was not fair to delay resolution of the case further, pending more meaningful engagement from the Respondent. The Tribunal therefore felt it was fair to proceed in the Respondent's absence.
8. In any event, the communication that had been received acknowledged the arrears sought originally, and had not set out any opposition to the sum sought, as amended.
9. On that basis, the Tribunal made its decision on the essential facts set out in the application.
 - Findings in Fact
10. The Respondent lets the Property from the Applicant in terms of a private residential tenancy, with a start date of 7 November 2022.

11. In terms of that agreement, rent of £1,200 is due on the 7th day of each month.

12. As at the date of the CMD, the Respondent was in arrears of rent of £14,400.

- Reasons for Decision

13. As a preliminary matter, the Tribunal granted the application to amend the sum sought, as unopposed.

14. The Tribunal found that the Respondent owes the amount sought, as amended. An order for payment of that sum should therefore be made.

- Decision

Order made for payment by the Respondent to the Applicant of the sum of FOURTEEN THOUSAND, FOUR HUNDRED POUNDS STERLING (£14,400).

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 Young

Legal Member/Chair

20 November 2023

Date