



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) 2016 Act

Chamber Ref: FTS/HPC/CV/23/2520

Re: Property at 30 McLaren Court, Hawick, TD9 8HN (“the Property”)

Parties:

Susan Lilley, Tayhill House, Gannochy Road, Perth, PH2 7EF (“the Applicant”)

Kay Miller, whose present address is unknown (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that payment in the sum of £693.23 be granted against the Respondent.

- 1) This was an application by the Applicant for civil proceedings in relation to a private residential tenancy in terms of rule 111 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”), namely an order for payment of rent arrears under the Tenancy Agreement. The tenancy in question was a Private Residential Tenancy (“PRT”) by the Applicant to the Respondent commencing on 5 April 2018.
- 2) The application was dated 18 July 2023 and lodged with the Tribunal on 27 July 2023. The application sought payment of arrears of £693.23 being “a difference” between the arrears previously awarded by the Tribunal in an earlier application under reference CV/22/3081 and the final total arrears as at termination of the Tenancy. The application papers, when read alongside the Decision in the said earlier application, disclosed that the Applicant was seeking the rent arrears from after the period already awarded, and then up to the date of termination of the Tenancy (15 December 2022). The lease for the Tenancy accompanied the application and it detailed a rental payment of £320 payable in advance on the 5th of each month.

The Hearing

- 3) The matter called for a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 17 January 2024 at 14:00. I was addressed by the Applicant. There was no appearance from the Respondent.
- 4) I was informed by the clerk that no contact had been received from the Respondent (or on her behalf) with the Tribunal. The Applicant stated that there had been no contact from the Respondent regarding the application. Service by Advertisement had been undertaken as the Respondent was no longer at the Property. The Applicant had sought to trace her and had identified a new address but service of the application at that address - by a Sheriff Officer instructed by the Tribunal - was not successful. (This was in regard to intimation of an earlier CMD date in late 2023 which was then cancelled and rescheduled.) The clerk confirmed that all steps in regard to the Service by Advertisement had been undertaken. Having not commenced the CMD until around 14:05, I was satisfied to consider the application in the Respondent’s absence. In any case, no attempt was made by the Respondent to dial in late to the CMD.
- 5) At the CMD, the Applicant confirmed that the application for an order for payment was still sought in the amount of £693.23 and that no further payments had been received against this sum since the raising of the application.
- 6) A rent statement covering the period from 5 October to 15 December 2022 was provided with the application papers and showed unpaid rent of £320 for each of the months commencing 5 October and 5 November 2022 and an unpaid pro-rated payment of £103.23 for the period from 5 to 15 December 2022 when the Tenancy terminated. These missed payments amounted to £743.23 against which the Applicant explained £50 was credited. She explained that her former letting agent had advised her that such a payment had been made by the Respondent prior to the end of the Tenancy. This left a balance of £693.23 outstanding for the period (over and above the arrears previously awarded in CV/22/3081).
- 7) The application was silent on interest but at the CMD the Applicant sought interest from the date of the decision at a judicial rate of 8% per annum. There was no contractual interest rate identified in the Tenancy Agreement.
- 8) No motion was made for expenses.

Findings in Fact

- 9) On or about 5 April 2018 the Applicant let the Property as a Private Residential Tenancy to the Respondent under a lease with a commencement date of 5 April 2018 (“the Tenancy”).
- 10) In terms of clause 8 of the Tenancy Agreement, the Respondent required to pay rent of £320 a month in advance on the 5th day of each month.

- 11) The Tenancy terminated on, and the Respondent vacated the Property by, 15 December 2022.
- 12) The Respondent failed to make payment of the majority of rent between 5 October and 15 December 2022. The rent due for this period was £743.23 against which payments of £50 were made by the Respondent.
- 13) On 27 July 2023, the Applicant raised proceedings against the Respondent for an order for payment of the rent arrears of £693.23 due for the period from 5 October to 15 December 2022 (and still unpaid as at the date of the application).
- 14) The Tribunal intimated to the Respondent the date and time of the CMD of 17 January 2023 by service by advertisement.
- 15) The Respondent provided no evidence of payment of any part of the said unpaid rent of £693.23 outstanding for the period 5 October to 15 December 2022.

Reasons for Decision

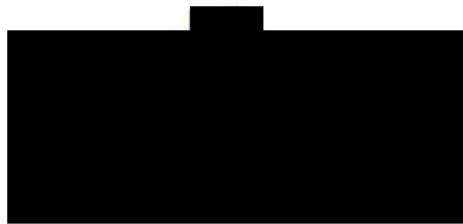
- 16) The application was in terms of rule 111, being an order for civil proceedings in relation to a PRT. I was satisfied, on the basis of the application and supporting papers, that rent arrears of £693.23 were due for the period from 5 October 2022 to termination of the lease on 15 December 2022 and remained outstanding as of today.
- 17) The Applicant was clear that she sought this sum as the final arrears due by the Respondent and that all other arrears (that is, for rent to 4 October 2022) were already awarded in terms of the earlier application CV/22/3081. No detailed consideration was required from me of the rent arrears for this earlier period, but the order sought in the current application appeared consistent with both the Decision issued in that earlier application, and with a historic statement of arrears (for the period before 5 October 2022) lodged with this application. The earlier Decision makes no findings in fact inconsistent with my findings in fact.
- 18) No defence was made by the Respondent to any part of the application. The application, supplemented by the submissions at the CMD, clearly set out the sums sought and I was satisfied that the necessary level of evidence for these civil proceedings had been provided.
- 19) The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. I was thus satisfied to make a decision at the CMD to award the sum of £693.23 against the Respondent. In regard to interest, I was satisfied to grant interest at the judicial rate of 8% from today's date until payment.

Decision

20) In all the circumstances, I was satisfied to make the decision to grant an order against the Respondent for payment of £693.23 with interest at 8% from 17 January 2024.

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.

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Legal Member/Chair

17 January 2024

Date