



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)

Chamber Ref: FTS/HPC/CV/23/3622

Re: Property at 19 Vernonholme, Riverside Drive, Dundee, DD2 1QJ (“the Property”)

Parties:

Miss Zoe Linton, Bannerman House, 27 South Tay Street, Dundee, DD1 1NP (“the Applicant”)

Miss Lesley Maureen Simpson, 19 Vernonholme, Riverside Drive, Dundee, DD2 1QJ (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

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 £5,087.10 should be made in favour of the Applicant.

Background

1. By application received on 12 October 2023, the Applicant applied to the Tribunal for an order for payment of rent arrears amounting to £2,962.50 against the Respondent. Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement and a rent statement in respect of the rent arrears. A conjoined application was made at the same time for an eviction order based on the rent arrears under reference FTS/HPC/EV/23/3620.
2. Following initial procedure, on 2 November 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. Notification of the application and details of the Case Management Discussion (“CMD”) fixed for 7 February 2024 was served on the Respondent by way of Sheriff Officer on 14 December 2023. In terms of said notification, the Respondent was invited to lodge written representations.
4. Prior to the CMD, the Respondent lodged a number of representations by email dated 2 January 2024, 11 January 2024, 21 January 2024 and 6 February 2024 explaining her position and updating as to ongoing developments with her circumstances.
5. The Applicant’s representative also submitted representations, requesting to amend the application to increase the rent arrears by a further £3,000 to £5,962.50, together with a supporting updated rent statement.

Case Management Discussion

6. The Case Management Discussion (“CMD”) took place by telephone conference call on 7 February 2024 at 10am and was attended by Mr David Gibb, Operations Manager, of Tay Letting Ltd, the Applicant’s letting agents, on her behalf and by the Respondent, Miss Lesley Simpson.
7. After introductions and introductory remarks by the Legal Member, who also explained the purpose of the CMD, there was discussion as to the parties’ respective positions in relation to the payment application.
8. Miss Simpson indicated that she would prefer to avoid an order being granted. She made reference to her written representations and explained how the arrears had come about and the efforts she had been making to reduce the arrears. She explained that she had changed employment and that she was paid on a different date of the month to previously, which led to her rent payments being late. The new job that she had gone to did not end up working out and she took on agency-type work. Her tax code was changed and she was expecting to get a tax rebate back but this has still not been sorted out. She did try to make payments when she could but fell further and further behind. Miss Simpson explained that the situation had not been helped by a breakdown in communication which had occurred, whereby she had advised Tay Lettings of a change in her contact email address. However, this had not been communicated to the accounts department which led to some of their email communications going to Miss Simpson’s previous work email. She wished to make the point that she did not simply ignore those communications from Tay Lettings. She had not received them as she was no longer in that employment. In addition, the Applicant had increased the rent from £975 to £1,000 per month in August 2023, which she did not agree with and thought this just put added pressure on her. She conceded, however, that it was a small increase and that she did not further challenge this at the time.
9. Miss Simpson has been in contact with the local authority in recent months and some payments have now been made towards the arrears by way of

discretionary housing payments as she is currently in receipt of Universal Credit. Miss Simpson has secured new employment with the NHS and expects to start around March. She confirmed that she was in the process of packing up and moving out of the Property and expects to be vacating in a few days time, on 10 February 2024. She mentioned the tenancy deposit of £1,075 which she proposes will be recovered at the end of the tenancy and put towards the outstanding arrears. She apologised for the situation and considers the Applicant to be a reasonable landlord. She stated that she fully intends to pay off this debt. Miss Simpson confirmed that she had made an offer to pay of the balance of the arrears at the rate of £100, but would look to increase this to £200 per month once she was back in regular employment in March. She was hopeful that the Applicant would agree on this basis not to seek a payment order at the present time and give her an opportunity to clear the balance. If an order is to be made, she would prefer an instalment order as opposed to an order for the full sum.

10. Mr Gibb confirmed that the Applicant wished the security of obtaining an order now. The rent is £1,000 per month and the rent arrears are high. Although he believes the Respondent will vacate the Property on 10 February, if she were to fail to do so, the Applicant would then be left in a bad position. He confirmed that there were sporadic payments towards rent from April 2023 and that a payment of £1,000 was made by the Respondent on 15 September 2023. However, there were no payments made after that, until two recent payments of £601.63 each were received from the local authority on 22 January 2024 and 5 February 2024. Mr Gibb confirmed that the current arrears balance is £5,087.10 and sought to reduce the amount claimed to that sum. (Miss Simpson confirmed that she accepted that sum as correct). Mr Gibb stated that the Applicant would like an order made for that sum today. He thinks there are too many uncertainties regarding the deposit (which depends on the condition of the Property once vacated) and future payments being made, given that, if the Respondent vacates on 10 February, there will be limited further payments made in respect of Universal Credit/Discretionary Housing Payments. The offer of £100 per month from Miss Simpson is not sufficient in his view, given the length of time it will take to clear the arrears at that rate. The Applicant would be looking for something closer to £300 per month.
11. In summing up, Mr Gibb reiterated that they will continue to work with Miss Simpson on the arrears and that it may be possible, once they know the reduced balance, that an acceptable payment arrangement can be reached.
12. Miss Simpson had nothing further to add in summing up, other than to apologise for the situation and the time this process has taken.
13. The Tribunal adjourned in order to discuss the application and, on re-convening, the Legal Member confirmed that the Tribunal had decided to grant the payment order sought in the sum of £5,087.10 today. There was brief discussion regarding the process to follow and parties were thanked for their attendance.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 29 December 2021.
3. The rent in terms of the tenancy was originally £975 per calendar month which increased in or around August 2023 to £1,000 per calendar month.
4. Rent arrears accrued during the tenancy and amounted to £2,962.50 when this application was submitted.
5. The last payment made by the Respondent was £1,000 on 15 September 2023.
6. Two further payments of £601.63 each have been received since then on behalf of the Applicant from the local authority in respect of Discretionary Housing Payments, on 22 January 2024 and 5 February 2024.
7. The rent arrears currently amount to £5,087.10.
8. The Respondent has been called upon to make payment in respect of the ongoing rent and the arrears but has failed to do so.
9. The sum of £5,087.10 is due and resting owing by the Respondents to the Applicant.
10. The Respondent accepts that this sum is owed and is correct.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, the representations lodged by the Respondent and the oral information given at the CMD on behalf of the Applicant and by the Respondent herself.
2. The Tribunal had regard to the terms of the tenancy agreement, the updated rent statement and the parties' oral submissions and was satisfied that the sum of £5,087.10 was due and resting owing in respect of unpaid rent due to the Applicant in terms of this application. The Respondent had fully explained the background to the arrears and her circumstances, but accepted that this figure was owed. She had hoped that the Applicant would accept the payment offer that she had proposed. The Tribunal considered the payment offer and the possibility of an order for payment by instalments being granted. However, the Tribunal ultimately agreed with the Applicant's representative that the proposed monthly payment of £100 was not sufficient, given the level of arrears, and that there were uncertainties regarding the Respondent's future financial position

and the potential lump sum payments that may be available to reduce the arrears further, such as from the tenancy deposit.

3. The Tribunal accordingly concluded that, in the circumstances, an order in the full sum sought could properly be made at the CMD today and that there was no requirement for further procedure or a continuation.

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

7 February 2024
Date