



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/23/2984

Re: Property at Flat 4 Royal Mews, 20 St Catherine Street, Cupar, KY15 4HH (“the Property”)

Parties:

Mr Geoffrey Hodges, Mrs Jacqueline Hodges, 3 Carisbrook Close, West Beach, Blouberg, CT. 7441, South Africa; 3 Carisbrook Close, West Beach, Blouberg, CT 7441, South Africa (“the Applicant”)

Ms Erin Wallace, c/o 4 The Dale, Kilconquhar, Leven, Fife, KY9 1LY (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal 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 £498.49 plus interest thereon at the rate of 10.25% should be made in favour of the Applicant.

Background

1. The application submitted on 30 August 2023 sought a payment order against the Respondent in the sum of £324.25 plus interest thereon, in respect of rent arrears arising from a Private Residential Tenancy (“PRT”) between the parties in respect of the Property which had commenced on 18 November 2020. Supporting documentation was submitted with said application, namely a copy of the PRT and a rent statement. The Tribunal accepted the application on 13 September 2023. Notification of the application was made to the Respondent by way of Sheriff Officer on 31 October 2023, together with details of the

arrangements fixed for the Case Management Discussion (“CMD”) to take place in respect of the application on 11 December 2023. In terms of said notification, written representations were to be lodged by 20 November 2023. No representations were lodged prior to the CMD.

2. The CMD took place by telephone conference call on 11 December 2023 at 2pm and was attended only by the Applicant’s representative, Mr David Wilkie, of The Property Management Company. It transpired at the CMD that the Respondent had vacated the Property on 11 September 2023, prior to service of the Tribunal papers at that address. Her current address is unknown. The Applicant was also seeking to amend the application by increasing the sum claimed to £524. The outcome of the CMD was that a further CMD was to be fixed, details to be arranged, to allow service on the Respondent to be effected by way of advertisement on the Tribunal’s website and to allow the Applicant’s representative to submit an application to increase the sum claimed and to provide further documentation in support of the sum claimed.
3. A further CMD was fixed to take place on 19 March 2024 and details of the application advertised on the Tribunal’s website for the relevant period from 5 February 2024 to 18 March 2024, conform to Certificate of Service by Advertisement dated 19 March 2024.
4. The Respondent subsequently made contact with the Tribunal Administration and was provided with a copy of the case papers. She lodged written representations by email on 8 March 2024. The Applicant’s representative also lodged further submissions and documents by email on 4 and 5 March 2024, in support of the increased sum claimed and the other matters discussed at the previous CMD.

Case Management Discussion

1. The CMD took place by telephone conference call on 19 March 2024 at 10am. It was attended by the Applicant’s representative, Mr David Wilkie, of The Property Management Company and by the Respondent.
2. Following introductions and introductory comments by the Legal Member, Mr Wilkie confirmed, with reference to the further supporting documentation lodged on behalf of the Applicant, that, although the Applicant considers they are owed the total sum of £635.49 by the Respondent in respect of rent arrears plus the balance of cleaning costs and repair issues (most of which were covered by the tenancy deposit), if the Respondent is prepared to pay the outstanding arrears of £498.49, plus interest, the Applicant is prepared to settle for that.
3. The Respondent, Ms Wallace, confirmed that she accepts this sum is owing and, as per her written representations, was asking for time to pay the amount by way of instalments. There was some discussion regarding this and the Respondent indicated that she could afford to offer £100 per month and to make her first payment by 1 April 2024. She confirmed that she is working currently but requires to meet costs in relation to her new property.

4. Mr Wilkie confirmed that, although this rate of payment would be acceptable, the Applicant would wish an order to be granted today for the full sum owing and the interest owing in terms of the lease. Provided the Respondent makes the payments as offered, they will not then require to move forward with any enforcement measures. Ms Wallace was in agreement with that and there was some discussion regarding the bank account details to which she should make her payments and Mr Wilkie confirmed that they would issue her monthly statements by email.
5. The Legal Member confirmed to parties that, in the circumstances, a payment order would be granted as sought, that paperwork would follow shortly reflecting this decision, parties were thanked for their attendance and the CMD brought to a close.

Findings in Fact

1. The Applicant is the owner and the landlord of the Property.
2. The Respondent was the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 18 November 2020 and ended on 11 September 2023.
3. The rent due in respect of the tenancy was originally £575 per calendar month, which had been increased to £592.25 per calendar month, with effect from 1 August 2023.
4. There were rent arrears owing by the Respondent at the end of the tenancy in the sum of £498.49, which remain outstanding.
5. In terms of clause 8 of the tenancy agreement, the Applicant is entitled to charge interest on late payments of rent at the rate of 5% above the current Bank of England base rate (5.25%), totalling 10.25%.
6. The tenancy deposit of £575 was returned to the Applicant at the end of the tenancy and has been retained by the Applicant to cover cleaning and repair type costs incurred and for which the Respondent was responsible.
7. There is no balance left over from the tenancy deposit to reduce the rent arrears.
8. The Respondent had been called upon to make payment of the sum due but had failed to do so.
9. The Respondent does not dispute the figure claimed and has offered to pay the sum due in instalments of £100 per month, commencing on or before 1 April 2024.

10. The sum of £498.49 is due and resting owing by the Respondent to the Applicant in respect of rent arrears incurred during the tenancy in terms of this application and has not been paid by the Respondent.

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, together with the written representations from the Respondent and her oral submissions at the CMD.
2. The Tribunal was satisfied that the increased sum sought in respect of rent arrears of £498.49 was due and resting owing by the Respondent and that the Applicant was entitled to charge interest on that sum at the rate of 10.25% per annum, being the contractual rate of interest specified in the tenancy agreement. The Respondent did not dispute these sums sought and had made a payment offer, which was informally accepted on behalf of the Applicant.
3. In the circumstances, the Tribunal determined that it was appropriate to make a payment order in the full sum sought at the CMD. No facts were in dispute and there was no other necessity for an Evidential Hearing to be fixed.

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

19 March 2024
Date