



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/23/3885

Re: Property at 15B Muirton Street, Inverness, IV3 5HY (“the Property”)

Parties:

Thomas Stuart Brown, 9 Glenburn Drive, Inverness, IV2 4ND (“the Applicant”)

Kevin Martin, 149 MacKintosh Road, Inverness, IV2 3TZ (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member)

Decision

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

- 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 1 October 2021 and concluding on 24 October 2023.
- 2) The application was dated 2 November 2023 and lodged with the Tribunal on that date. The application sought payment of arrears of £1,753.74 plus “any costs involved in securing payment”. The application was accompanied by a rent statement and further supporting information showing that the sum amounted to missed rental payments of £480/month from 1 June 2023 until 1 September 2023 (against which one payment of £480 had been received on 30 August 2023); plus pro-rated rent of £378.74 for the period from 1 to 24 October 2023; all less a balance of £65 recovered from a deposit. (The deposit was said to be £480 but £415 had been applied by the Applicant against cleaning and clearance costs.)

The lease for the Tenancy accompanied the application and it detailed a rental payment of £480 payable in advance on the 1st of each month and a deposit due of £480.

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 18 March 2024 at 14:00. I was addressed by the Applicant’s agent, Liz Black, Property Manager, Scottish Highland Property Services, and by the Respondent himself.
- 4) At the CMD, the Applicant’s agent confirmed that the application for an order for payment was still sought at the amount of £1,753.74. I asked for an explanation of the order sought relating to “any costs involved in securing payment” and the Applicant’s agent said that this referred to any costs of enforcement after the grant of the order. I explained that such Sheriff Officer’s fees and other costs of diligence would be outwith the scope of any order by the Tribunal but may be recoverable in terms of the usual provisions on diligence. The agent confirmed that only an order for £1,753.74 was thus sought. The agent confirmed no interest was sought on the order. No motion was made for expenses.
- 5) The Respondent confirmed he held the order sought to be reasonable and that he wished to resolve matters as best he was able. I pressed the Respondent to confirm that there was no dispute on: the amount of arrears; the end date of the Tenancy (said to be 24 October 2023 in terms of the rental statement); the arithmetic of the pro-rated rent for 1 to 24 October 2023 of £378.74; nor the £65 applied from the deposit (and that the rest of the deposit had otherwise been applied against non-arrears sums sought by the Applicant). There was no dispute on any matters.
- 6) Having confirmed that the Respondent had no opposition to an order being granted for £1,753.74 against him, I sought clarification from him whether he sought any Time to Pay Direction from the Tribunal, as no application had been lodged. The Respondent at first said that he sought to agree a payment proposal with the Applicant, but – when the option of seeking a formal Time to Pay Direction was explained – he moved for such a direction at £300 per month.
- 7) The Applicant’s agent was understandably unable to consider the offer without further information but both parties were willing to discuss matters more fully at the CMD, with the Respondent providing financial information orally. The Respondent provided his estimated income and expenditure, and estimated net free monthly income in excess of £300. The Applicant’s agent was satisfied on the basis of the information provided to accept the Time to Pay offer of £300/month. I explained to the parties that a formal Time to Pay Direction would thus be included in any order, that the Applicant would require to intimate the order, and the Respondent would require to make a payment of at least £300 per month, each month regularly, until the debt was cleared in full.

Findings in Fact

- 8) On or about 28 September 2021 the Applicant let the Property as a Private Residential Tenancy to the Respondent under a lease with a commencement date of 1 October 2021 (“the Tenancy”).
- 9) In terms of clause 8 of the Tenancy Agreement, the Respondent required to pay rent of £480 a month in advance on the 1st day of each month.
- 10) In terms of clause 11 of the Tenancy Agreement, the Respondent required to provide a deposit of £480 to the Applicant, which deposit was paid.
- 11) The Tenancy terminated on, and the Respondent vacated the Property by, 24 October 2023.
- 12) As at 24 October 2023, the Respondent was in arrears of rent of £1,818.74 being rent incurred from 1 June 2023 to 24 October 2023 of £480 per month for the months commencing 1 June, 1 July, 1 August and 1 September 2023 and a pro-rated sum of unpaid rent from 1 October to 24 October 2023 of £378.74, less £480 paid on 30 August 2023.
- 13) On or about 25 October 2023, the Applicant recovered the deposit paid by the Respondent.
- 14) On or about 2 November 2023, the Applicant applied against the deposit costs of £350 for cleaning costs at the Property and £65 for clearance costs of items left at the Property. The Applicant then applied the balance of £65 against the rent arrears.
- 15) The balance of rent arrears, after application of the balance of the deposit, was £1,753.74 as of 2 November 2023.
- 16) The Respondent provided no evidence of payment of any part of the said unpaid rent of £1,753.74.

Reasons for Decision

- 17) 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 £1,753.74 were due for the period from 1 June 2023 to termination of the lease on 24 October 2023, less the balance of deposit and the payment to account on 30 August 2023. I was satisfied that the sum remained outstanding as of today. The Respondent, in any case, did not dispute the sum was due.
- 18) 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 £1,753.74 against the Respondent.
- 20) In considering the Time to Pay Direction, I was satisfied that it was appropriate under Rule 2 to consider an oral motion, in particular given the Applicant's agent's agreement on this procedure and that alternative would have been a continuation of the CMD for a written application (to no material benefit for the parties and potential detriment caused by such a delay). I took the Respondent through the information that would be required in a written application and was grateful to him for his concise narration of his financial affairs at the CMD. He was confident that he would have at least £300 per month available to make payment under a Time to Pay Direction. I was equally grateful to the Applicant's agent for her willingness to consider matters in this way, and her swift consent - once she had heard the Respondent's oral submissions - to a Time to Pay Direction at £300 per month. I thus had no hesitation in granting a Time to Pay Direction of £300 per month which, in any case, was a reasonable proposal in the circumstances as it would take six months to clear the debt.

Decision

- 21) In all the circumstances, I was satisfied to make the decision to grant an order against the Respondent for payment of £1,753.74 with a Time to Pay Direction as stated above.

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.

18 March 2024

Legal Member/Chair

Date