



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/23/3394

Re: Property at 14 Falcon Road, Buckhaven, KY8 1EL (“the Property”)

Parties:

Mrs Frances Todhunter, Lodge 12, Cairnsmill Caravan Park, Largo Road, St Andrews, KY16 8NN (“the Applicant”)

Ms Jacqueline Crawford/ Campbell, 9 Sir David Russell Cres, Glenrothes, KY7 5BA (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be granted in favour of the Applicant in the sum of £6230.

Background

1. An application was made purportedly under Rule 70 for an order for payment and received in the period between 26th September and 16th December 2023. The Applicant lodged a copy of a private residential tenancy agreement that commenced on 16th August 2019, together with a rent statement, and copy correspondence between the parties. The Applicant was seeking a payment order in the sum of £6780 in respect of unpaid rent.
2. Intimation of the application and a forthcoming Case Management Discussion was made upon the Respondent by Sheriff Officer on 22nd March 2023.
3. On or around 3rd April 2024, the Respondent made an application for a Time to Pay Direction (“TTPD”) with instalments in the sum of £50 per month. The Respondent included further information within the application form that suggested she may have a defence to the application in respect of sums she claimed to have spent on the Property during the tenancy.

4. By emails dated 10th April 2024, the Applicant provided a response to the TTPD. It was not clear from the terms of the emails if the TTPD was accepted.
5. By email dated 15th April 2024, the Respondent made written representations, including claiming that she had paid 'thousands for things' in the Property, cash payments had been paid for rent, and a tenancy deposit of £900 had been retained by the Applicant.
6. Parties were informed on 18th April 2024 that matters would be discussed further at the forthcoming Case Management Discussion.
7. By email dated 18th April 2024, the Respondent indicated she would be taking legal advice.

The Case Management Discussion

8. A Case Management Discussion ("CMD") took place by telephone conference on 1st May 2024. The Applicant was in attendance. The Respondent was not in attendance. The Tribunal considered the terms of Rule 29. The Tribunal determined that the requirements of Rule 17(2) had been satisfied. The Tribunal determined it was appropriate to proceed with the application in the absence of the Respondent,
9. The Tribunal indicated that the application ought to have been made under Rule 111. The Applicant confirmed she wished to amend the application to Rule 111 and this was accepted by the Tribunal.
10. The Applicant explained the background to the application, stating that the Respondent had occasionally been in arrears after the start of the tenancy, and she often caught up by making extra payments. From June 2022, arrears accrued further. The Respondent was on Universal Credit. Despite the Applicant asking that direct payments be made to her, after discussion with the Respondent, this did not happen. At various times, the Respondent, and then her sister, had indicated they wished to purchase the Property. The Respondent said her husband had terminal cancer, and the Applicant was sympathetic.
11. Responding to questions from the Tribunal, the Applicant said the tenancy ended in or around late May or early June 2023. The Applicant claimed there was damage to the Property and a skip was required to dispose of the Respondent's belongings. The Applicant said she accepted a cash payment for rent on one occasion and this was reflected in the rent statement lodged.
12. Responding to questions from the Tribunal, the Applicant said the tenancy deposit was £550, and not the sum of £900 claimed by the Respondent. It had been lodged with an approved tenancy deposit scheme. The Applicant had made a claim to retain the deposit at the end of the tenancy, which had initially been challenged by the Respondent, but the Respondent did not submit any further representations or evidence to the tenancy deposit scheme, and the

deposit was paid to the Applicant. Following some discussion as to the basis of the claim made by the Applicant to the tenancy deposit scheme, and whether it was retained as a result of rent arrears or alleged damage to the Property, the Applicant conceded the tenancy deposit scheme awarded the sum of £550 in respect of rent arrears. The Applicant indicated she would accept a payment order in an amended sum, reduced by £550, to £6230.

13. The Applicant indicated that she was opposed to the TTPD as it would take over ten years to clear the debt at instalments of £50 per month. The Applicant outlined action taken by her on several occasions to assist the Respondent in paying the debt, referring to messages between the parties, and messages to the Applicant from the Respondent's sister, which indicated various promises to make payment of lump sums, which never materialised. The Applicant had been provided with screenshots, which were lodged as part of the application, indicating variously that a lump sum payment had been paid into the Respondent's bank account, and it would be used to cover the arrears, and that the Respondent's sister had set up a transfer of a lump sum. Neither of these sums ever materialised. Agreement to accept payment by instalments had failed. The Applicant said she then discovered the Respondent's husband was not terminally ill. The Applicant said she was unable to make any representations on the figures provided by the Respondent in the TTPD application.

Findings in Fact and Law

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- (i) Parties entered into a private residential tenancy agreement that commenced on 16th August 201 with monthly rent due in the sum of £550, which then increased to £600 per month.
 - (ii) The tenancy ended in or around late May or early June 2023.
 - (iii) Rent lawfully due in terms of the tenancy agreement has not been paid by the Respondent.
 - (iv) The Applicant is entitled to recover rent lawfully due.
 - (v) The Applicant tried to assist the Respondent in paying the debt due by agreement instalment plans and discussing payment options.
 - (vi) The proposal made by the Respondent to pay the debt in instalments of £50 per month is not reasonable.
 - (vii) The Applicant's objection to the proposals by the Respondent is reasonable.
 - (viii) No Time to Pay Direction is granted.

Reasons for the decision

14. The Tribunal considered the representations made by the Respondent in regard to a possible defence to the application, notwithstanding that the Respondent had indicated she accepted liability for the sum. The Respondent failed to attend at the CMD to put forward her defence, and it was clear from the correspondence between the parties, and between the Respondent's sister and the Applicant, that the debt was not disputed during the tenancy. The Tribunal noted that the Respondent's sister claimed she had made a bank transfer in the sum of £4980 on 14th April 2023, going so far as to provide the Applicant with a screenshot indicating that the transfer had been scheduled, yet the funds never materialised. In discussion between the parties by email on 12th May 2023, the Respondent refers to the sum of £5580 being due in full, and she makes no mention of any counterclaim in respect of sums spent by her on the Property. In all the circumstances, the Tribunal considered the Respondent had accepted the sum was due.
15. The Tribunal considered the Applicant was not entitled to include the tenancy deposit sum of £550 in her claim. This sum had been granted to her by the tenancy deposit scheme having made a claim in respect of rent arrears, and it must be deducted from the sum sought.
16. Rent lawfully due in terms of the tenancy agreement between the parties has not been paid by the Respondent. The Applicant is entitled to recover rent lawfully due.
17. The Tribunal considered the matters set out in section 1(A) of the Debtors (Scotland) Act 1987 in considering whether to grant the TTPD. The Tribunal took into account the limited information it had on the nature and reasons for the debt, and the action taken by the Applicant to assist the Respondent in paying the debt, evidenced by the communications between the parties. The Tribunal took into account the Respondent's financial position as reflected in the TTPD application, and considered that a higher sum could have been offered each month, given that the Respondent claims to have over £400 excess each month, however, the Tribunal did not feel minded to grant a TTPD in a higher sum without the Respondent being present to discuss the sums in the application form further. The Tribunal considered it was entirely unreasonable to repay the debt in the sum of £50 per month, as this would take over 10 years to clear. The Tribunal considered the Applicant's objection to the proposal to be reasonable given the length of time it would take for the debt to clear. In all the circumstances, the Tribunal decided not to grant a TTPD.

Decision

18. An order for payment is granted in favour of the Applicant in the sum of £6230.

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.

H. Forbes

Legal Member/Chair

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1st May 2024

Date