



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”)

Chamber Ref: FTS/HPC/CV/24/0115

Re: 161 Lyttleton, East Kilbride, South Lanarkshire, G75 9BS
 (“the Property”)

Parties:

**Mr Mark Robertson, of 10 McLaren Grove, East Kilbride, Glasgow, G74 4SR
 (“the Applicant”)**

**Mr David Jon Masterton and Ms Lara Marissa Sweeney, both (formerly) of 161
 Lyttleton, East Kilbride, South Lanarkshire, G75 9BS
 (jointly and severally “the Respondents”)**

Tribunal Member:

Pamela Woodman (Legal Member)

Present:

The case management discussion took place at 2pm on Thursday 25 April 2024 by teleconference call (“the CMD”). The Applicant was not present but was represented by Mr Jeffrey Livingstone of Landlord Agents Ltd. The Respondents were both present at the CMD. The clerk to the Tribunal was Rachael Pender.

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment for £4,660 be granted against the Respondents (jointly and severally) in favour of the Applicant.

BACKGROUND

1. An application had been made to the Tribunal under section 71(1) of the 2016 Act and in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“HPC Rules”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended. More specifically, the application was made in terms of rule 111 (*Application for civil proceedings in relation to a private residential tenancy*) of the HPC Rules.

2. The order sought from the Tribunal was an order for payment against the Respondents in the sum of £4,660 in respect of rent arrears.
3. Various documents were provided in support of the application (dated 10 January 2024), including copies of the following:
 - a. Scottish private residential tenancy agreement between the Applicant and the Respondents dated 16 and 25 February 2022 (“**Tenancy Agreement**”), providing for:
 - i. a start date of 1 March 2022;
 - ii. rent of £550 per calendar month, payable in advance on or before the 1st of each month;
 - iii. payment of a rent deposit of £650;
 - iv. notices to be sent by e-mail to the e-mail addresses set out in the Tenancy Agreement; and
 - v. each of the Respondents being jointly and severally liable for the obligations of the tenant under the Tenancy Agreement.
 - b. Statement of account covering the period from 1 September 2022 to 1 January 2024, which stated that there were arrears of £4,660.
4. A notice of acceptance of the application was issued by the Tribunal dated 5 February 2024 under rule 9 of the HPC Rules, which confirmed that the application paperwork had been received by the Tribunal on 10 January 2024.
5. Each of the Respondents was sent notice of the CMD by letter dated 18 March 2024, which was confirmed (in the certificate of intimation from Andrew Richardson of Walker Love, sheriff officers) as having been served on 19 March 2024 by serving personally on Ms Lara Marissa Sweeney and leaving the notice for Mr David Jon Masterton in the hands of Ms Lara Marissa Sweeney.
6. The Respondents had not provided written submissions in advance of the CMD.
7. This decision arises out of the CMD.

PRELIMINARY ISSUE

8. The Applicant’s representatives had sent an e-mail to the Tribunal’s administration team by e-mail on 23 April 2024 (i.e. 2 days before the CMD) requesting an amendment to the application form (and attaching an amended application form stating that the “arrears as of December 2023” were £5,760 and attaching a statement of account from 1 September 2022 to 1 April 2024, which stated that there were arrears of £6,031.23).
9. The Tribunal noted that rule 14A of the HPC Rules allows an applicant to request to amend an application, including the amount claimed, by intimating the amendment to the Tribunal and any other party at least 14 days prior to a case management discussion or hearing. If an applicant has intimated the request in accordance with this requirement, then (and only then) may the Tribunal consent to the amendment on such conditions, if any, as the Tribunal thinks fit.

10. It was accepted by the Applicant's representative that the requested amendment had not been intimated to the Tribunal at least 14 days prior to the CMD and had not been intimated at all to the Respondents.
11. Given that the intimation requirements of rule 14A of the HPC Rules had not been met, the request to amend the application was refused by the Tribunal.

PROCEEDINGS, NAMELY THE CMD

12. Ms Sweeney, one of the Respondents, accepted that there were arrears of rent of £4,660 under the Tenancy Agreement in respect of the period to 31 December 2023 and that no further payment had been made.
13. Ms Sweeney confirmed that the Respondents left the Property on 31 March 2024.
14. Ms Sweeney explained that the Respondents were not in a position to make a lump sum payment because neither of them was currently working and that, after being made homeless for a period of time, they were now (as of 12 April 2023) living in a housing association property in Carluke.
15. Ms Sweeney stated that the Respondents did intend to pay the arrears to the Applicant when they were able to afford to do so.
16. The Applicant's representative confirmed that the tenancy deposit was still lodged with the tenancy deposit scheme and the Applicant would be applying to recover the costs of cleaning and small repairs from that. The Tribunal noted that the release of the tenancy deposit would be a matter for the tenancy deposit scheme at the relevant time and would not form part of today's proceedings.
17. The Applicant's representative confirmed that the Applicant would be willing to agree to payment of the arrears over a maximum 36-month period, which the Tribunal calculated would be at a rate of approximately £129.44 per month.
18. Ms Sweeney confirmed that the Respondents could not currently afford to make monthly payments at that level given that they were only in receipt of universal credit of £1,300 per month for a family of 3. Instead, she suggested that payments could be made at a rate of £50 per month, which the Tribunal calculated would result in payment over more than 93 months (or 7 years and 9 months).

FINDINGS IN FACT

19. The Tribunal was satisfied, on the balance of probabilities, that the Applicant was the registered proprietor of the Property (title number LAN5199) and that he was the registered landlord of the Property.
20. The Tribunal was satisfied that rent at a rate of £550 per calendar month was payable under the Tenancy Agreement in respect of the Property, and that the Respondents were jointly and severally liable for payment of rent (and so any arrears of rent).

21. The Tribunal was satisfied that there were arrears of rent under the Tenancy Agreement to (and including) 31 December 2023 of £4,660. This had been accepted by Ms Sweeney during the CMD.
22. Time to pay guidance and a time to pay application form had been provided to the Respondents (at the same time as they were notified of the date and time of the CMD) but no application for a time to pay direction had been made by the Respondents and so there was no application for the Tribunal to consider and/or determine.
23. In addition, there was no agreement between the parties during the CMD of an appropriate payment schedule.

REASONS FOR DECISION

24. It had been accepted by Ms Sweeney that £4,660 was due and payable by the Respondents (jointly and severally) to the Applicant under the Tenancy Agreement.
25. No application for a time to pay direction had been made by the Respondents in advance of the CMD or otherwise.

OBSERVATIONS

26. Even if an application for a time to pay direction had been made by the Respondents (which was not the case here) to pay at a rate of £50 per month, the Tribunal observed that that would have been refused on the basis that it would not be reasonable for payment to take approximately 7 years and 9 months. The Tribunal also observed that even a period of 3 years would ordinarily be considered long for time to pay.

DECISION

27. The Tribunal granted the application under section 71(1) of the 2016 Act for an order for payment in the sum of £4,660 (four thousand six hundred and sixty pounds sterling only).

Right of Appeal

In terms of Section 46 of the Tribunals (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)

25 April 2024

Date