



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/23/1389

Re: Property at Pilmuir House, Pilmuir Estate, Haddington, EH41 4HS (“the Property”)

Parties:

The Trustees of Henry Wades Pilmuir Trust, C/O Athene Associates, 37a Sidegate, Haddington (“the Applicant”)

Mrs Annabel Cruden, Mr Christopher Cruden, Pilmuir House, Pilmuir Estate, Haddington, EH41 4HS (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to an order for payment for £7408.58 (SEVEN THOUSAND FOUR HUNDRED AND EIGHT POUNDS AND FIFTY EIGHT PENCE)

Background

1. An application was received by the Housing and Property Chamber dated 27th April 2023. The application was submitted under Rule 111 of The First-tier for Scotland Housing and Property Chamber (Procedure) (Scotland) Regulations 2017 (“the 2017 Regulations”). The application was based on the Respondent not maintaining rent payments.
2. On 9th June 2023, all parties were written to with the date for the Case Management Discussion (“CMD”) of 14th July 2023 at 10am by teleconferencing. The letter also requested all written representations be submitted by 30th July 2023.

3. On 29th June 2023, Mr Mark Coull, the Respondent's representative, emailed the Housing and Property Chamber requesting that the case be postponed allowing Mr Coull to attend the CMD, to allow the Respondents to become more financially stable and due to medical reasons arising from Mr Cruden's ongoing health issues. The Tribunal agreed to the postponement. A new date was set for 14th September 2023 at 10am by teleconferencing. All parties were written to by email on 15th August 2023 informing of the new date of the CMD.
4. Both parties lodged submissions prior to the CMD.
5. The case was conjoined with case FTS/HPC/EV/23/1315.

The Case Management Discussion

6. A CMD was held on 14th September 2023 at 10am. The Applicant was represented by Mr Thomas Stanley, Athene Associates Limited. The First Named Respondent was present and appeared for both Respondents. The Respondents were represented by Mr Mark Coull, Haddington Citizens Advice Bureau.
7. Mr Stanley said that he was still seeking an order for payment. He said that there had been many offers of payment but that these were not forthcoming. He noted that he had been contacted by the First Named Respondent in January 2021, March 2021, March 2022 and January 2023 regarding payments which were not paid. He considers that this demonstrates a pattern of behaviour in terms of payment. He is not persuaded that there will be a lump sum payment that has been offered in October will be paid given the Respondents history with payments and payment offers. Mr Stanley said that the current payments for the rent are being made in two lots by Mrs Cruden. This is not meeting the full rent charge. It is approximately £75 per month short of the rent charge. The arrears currently stand at £9341.60. Mr Stanley said that the Property is a 5 bedroom property over three floors. It is only occupied by the Respondents. The Tribunal found the rent statement unclear and asked if Mr Stanley he would produce a clear rent statement with columns under the headings date, rent due, rent paid and arrears. The payments should be allotted to the period that they have been paid.
8. Mr Coull said that there were issues arising out of the case. He said that he considered that there should be a discount of 10% on the rent charge as the grass has not been cut as per the lease. The Tribunal queried if the rent had been withheld and the appropriate notices served. Mr Coull confirmed the rent had not been withheld and there has been no notices served upon the Applicant. There has not been a Repairing Standards application made but notices have been sent to the Applicant.
9. Mr Coull said that the arrears were not in dispute. Mr Coull said that the Universal Credit payments would continue. The Tribunal was not clear how long that it would continue in payment. Mr Coull said that a payment of £5400 would be made at the end of October as per his submission. This would be in addition

to the payment made by Universal Credit. The Tribunal needs this exact position of benefit entitlement clarified in terms of ongoing entitlement. The DHP has been extended until 31st October 2023.

10. Mr Coull had raised in his submission that the rent increase in October 2023 was not lawful. On discussing this with him he reconsidered his position and now does not consider it unlawful.
11. Mr Cruden confirmed that he is to make a lump sum payment of £5400 at the end of October. He has been able to get business re-established and expects to have suitable funds to make the payment towards the arrears. Prior to 2019 his business had been very successful. It was affected by the change in regulations arising from Brexit. He has been able to resolve the issues and is once again working. He anticipates paying off the arrears by the end of January 2024.
12. The Tribunal discussed if he had considered a Time To Pay direction. A discussion followed regarding a Time To Pay Direction ("TTPD"). It was explained that this would allow the Respondents to pay up the outstanding arrears. The Tribunal noted that the Respondent will need to be active in applying for the TTPD. They will need to contact the Housing and Property Chamber to request that a TTPD be sent to them. If the TTPD has been completed it would need to be lodged with the Housing and Property Chamber. The Applicant and Tribunal will then be sent a copy of it. If the Applicant agrees to the amount offered then the case will be dealt with administratively and will not proceed to the CMD. If the amount offered is not accepted by the Applicant then the case will proceed to the next CMD. The Tribunal noted that a TTPD allows for the outstanding amount to be paid in instalments. Should those instalments stop before the debt is repaid then the Applicant is entitled to a full order for the remaining amount. The Tribunal also noted that should the Respondents decide not to proceed with a TTPD or not address the outstanding debt it will be most likely that at the next CMD the Tribunal will grant the full order as the debt has been admitted. The Mr Cruden understood these points. He will discuss this with Mr Coull.
13. The Tribunal decided that it was appropriate to continue the case to a further CMD.

The CMD continued

14. The continued CMD was held on 22nd January 2024 at 10am by teleconferencing. The Applicant was represented by Mr Thomas Stanley, Athene Associates Limited. The Respondents were not present but were represented by Mr Mark Coull, Haddington Citizens Advice Bureau.
15. Mr Coull told the Tribunal that a payment of £4000 had been made on Friday 19th January 2024. There had been some discussion between parties at the CMD as to whether this included the rent payment which was due to be paid on that date. Mr Stanley said that there was no rent payment made. Mr Coull was

told by the Respondents that this payment did not include the rent payment and was solely towards the arrears. As a consequence of this payment the arrears are now £5597. Mr Coull said that matters have progressed with the First Named Respondent's business. He now anticipates being able to pay of the remaining arrears on 31st May 2024 failing which he will pay it off on 30th June 2024. Mr Coull emphasised that the granting of a payment order may have an impact upon the First Named Respondent's ability to continue with his business. The Tribunal noted that there could be one further CMD set to allow for this payment to be made. The Respondents are to move out of the Property on 31st May 2024 which is the same date as payment is proposed. The Tribunal will continue to a date for the week commencing 10th June 2024 to allow for this payment to be made. Mr Stanley said that he will take instructions regarding the payment order. The Applicant's priority has been to ensure that the Property was returned to them. The Tribunal noted that the arrears are admitted then should the payment not be made it is very likely that an order for payment will be granted. Mr Coull said that he understood this and would inform the Respondents. Mr Coull said that the Respondents will pay £100 per month to the arrears in the meantime. The First Named Respondent is paid quarterly and will get his next payment in the second half of April. Some of this money is going to be used towards the deposit for the new property. The case was continued to a further CMD to allow for the Respondents to pay the remaining arrears on 31st May 2024 and to pay £100 per month to the arrears until that date.

16. On 10th June 2024, the Applicant's representative emailed the Housing and Property Chamber attaching a rent account for the period 11th December 2022 – 11th May 2024. This included rent due for the remaining 19 days of the month which the Respondents would be in the Property. The arrears were shown as being £7407.58.

The second continued CMD

17. The second continued CMD was held on 11th June 2024 at 10am by teleconferencing. The Applicant was represented by Mr Thomas Stanley, Athene Associates Limited. The Respondents were not present but were represented by Mr Mark Coull, Haddington Citizens Advice Bureau.
18. Mr Stanley told the Tribunal that there have been no further payments made other than those that have been noted upon the rent account. There have been no offers of payment. There is a deposit of £2145. This has not yet been returned to the Applicant. This is because the Respondents only left the Property on the 3rd or 4th June 2024. The Appellant is not looking for payment between the period 31st May 2024 – 3rd/4th June 2024.
19. Mr Coull said that the Respondents position has changed. He spoken to the Mr Cruden this morning. Mr Cruden has told him that he cannot make payments to the arrears as he had said that he would be able to do so. Mr Coull is looking to enter into a Debt Arrangement Scheme ("DAS"). Mr Coull said that the arrears are not in dispute.
20. The Tribunal was content to grant an order for payment.

Findings and reason for decision

21. A Private Rented Tenancy Agreement commenced 11th July 2019.
22. The Respondents have persistently failed to pay their rent charge of £1800 per month. The rent payments are due to be paid on 11th day of each month.
23. There are no known outstanding Housing Benefit issues.
24. The arrears sought total £7407.58.
25. The arrears are not disputed by the Respondents.

Decision

26. The Tribunal found that the Applicant was entitled to be granted an order for payment amounting to £7408.58 (SEVEN THOUSAND FOUR HUNDRED AND EIGHT POUNDS AND FIFTY EIGHT PENCE).

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.

Gabrielle Miller

11th June 2024

Legal Member/Chair

Date