



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/23/4451

Re: Property at 9 Lennox Avenue, Coatbridge, ML5 1NN (“the Property”)

Parties:

Mrs Leigh Moffat, Mr Thomas Moffat, The Glen, 103 Glenmavis Road, Airdrie, ML6 0PQ (“the Applicant”)

Mr Philip Christie, Mrs Susan Christie, 9 Lennox Avenue, Coatbridge, ML5 1NN (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Ahsan Khan (Ordinary 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 £10,334 should be made in favour of the Applicant.

Background

1. By application received on 11 December 2023, the Applicant applied to the Tribunal for an order for payment of rent arrears amounting to £9,109 against the Respondent. Supporting documentation was submitted in respect of the application, including a copy tenancy agreement and a rent statement in respect of the rent arrears. An application for eviction based on rent arrears was submitted at the same time and was conjoined with this application.
2. Following initial procedure, on 1 March 2024, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.

3. Notification of the application and details of the Case Management Discussion (“CMD”) fixed for 18 June 2024 was served on the Respondent by way of Sheriff Officer on 16 May 2024. In terms of said notification, the Respondent was given until 5 June 2024 to lodge written representations. No representations were lodged by that date.
4. On 4 June 2024, the Applicant’s representative submitted by email an updated rent statement, together with a request to increase the sum claimed to £10,334.
5. On 10 June 2024, the Respondent emailed and requested a postponement of the CMD on the basis that the second-named Respondent had a hospital appointment on the morning of the CMD. A copy of the appointment letter was produced in support. Several subsequent emails were submitted by both parties regarding the postponement request, which the Applicant was opposed to. The Tribunal determined that cause had not been shown for the CMD to be postponed but, to accommodate the Respondent, the start time of the CMD was moved from 2pm to 3pm.
6. Some of the emails from the Respondent regarding the postponement request also contained written representations from the Respondent, particularly in relation to the eviction application. In addition, a letter from CAB on behalf of the Respondent was submitted by the Respondent by email on 15 June 2024 but was only circulated to the Tribunal Members and Applicant’s representative shortly before the CMD. Essentially, the Respondent appeared to be admitting the rent arrears.

Case Management Discussion

7. The Case Management Discussion (“CMD”) took place by telephone conference call on 18 June 2024 at 3pm, attended by Miss Jennifer Anderson, Solicitor, of Clarity Simplicity Ltd on behalf of the Applicant and by both Respondents, Mr Philip Christie and Mrs Susan Christie.
8. After introductions and introductory remarks by the Legal Member, there was discussion regarding the applications. Mr and Mrs Christie confirmed that they accepted that the increased sum of £10,334 in rent arrears was admitted. Mr Christie stated that he used to work for the Applicant’s haulage company and had a period of absence from work through ill health which involved him having three weeks in hospital. He eventually resigned from the job in April 2024. He was embarrassed about the rent arrears and the fact that he had not been able to pay off the arrears previously. He had been struggling to get a job since because he had been off work for a year and had also not been able to get benefits because he resigned from his employment. Mrs Christie provided some details regarding her health difficulties and confirmed that she is in receipt of Universal Credit and PIP. She thinks that Mr Christie could probably qualify for Carer’s Allowance as he is looking after her. She stated that they would be able to offer payments of £100 per month towards the arrears at the present time.

9. Miss Anderson confirmed that the Applicant was seeking a payment order for the full sum. She confirmed that the arrears situation has been ongoing for some time, since 2018, and that the Applicant has tried to accommodate the Respondent in resolving the arrears. However, the financial pressures have built up and this has caused stress and difficulties for the Applicant.
10. Mrs Christie stated that it was just not possible or viable for them to pay the arrears off in a lump sum, when their only current income is benefits. They have their own ongoing living expenses to pay as well. She commented that she and Mr Christie have also had stress and sleepless nights over their finances and the rent arrears.
11. The Tribunal briefly adjourned to consider the application in private and, on re-convening, the Legal Member confirmed that the payment order would be granted today in the full sum sought of £10,334. It was explained that the Tribunal did not consider an instalment order of £100 per month to be appropriate or reasonable, given the circumstances. It was further explained, however, that the parties may still be able to reach a re-payment arrangement in due course once the payment order becomes enforceable but that this would be outwith the Tribunal process. Parties were thanked for their attendance.

Findings in Fact

1. The Applicant is the joint owner and landlord of the Property.
2. The Respondent is the joint tenant of the Property by virtue of an Assured Tenancy which commenced on 18 November 2016.
3. There was a Private Residential Tenancy (PRT) agreement lodged by the Applicant, signed by the first-named Respondent only, but the tenancy was deemed to be an Assured Tenancy due to its date of commencement pre-dating the PRT regime coming into existence.
4. The first-named Respondent was employed by the second-named Applicant when the tenancy arrangement was entered into.
5. The first-named Respondent's employment with the second-named Applicant ended in April 2004 but the tenancy is ongoing.
6. The rent in terms of the tenancy is £120 per week.
7. Rent arrears started to accrue during 2018 and amounted to £9,109 when this Tribunal application was lodged.
8. The rent arrears now amount to £10,334.
9. The Respondent admits the amount of arrears.

10. Various payment arrangements had been entered into by the parties during the tenancy to try and address the arrears situation, but these were not adhered to.
11. The Respondent has been called upon to make payment in respect of the rent arrears but has failed to do so.
12. The sum of £10,334 is due and resting owing by the Respondent to the Applicant in respect of rent arrears.
13. The Respondent is currently on a limited income, consisting only of the second-named Respondent's state benefits.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, and the oral information given at the CMD on behalf of the Applicant by Miss Anderson and by both Mr and Mrs Christie.
2. The Tribunal had regard to the terms of the tenancy agreement and the rent statements lodged and was satisfied that rent arrears in the sum of £10,334 had accrued during the period of the tenancy and that this sum was due and resting owing in respect of unpaid rent due to the Applicant in terms of this application. The Respondent admitted the claim. The Tribunal considered that there was no material before it to contradict the information from the Applicant and therefore no requirement to continue the application to a further CMD or Evidential Hearing.
3. The Tribunal considered the offer made by the Respondent during the CMD to pay the arrears off at the rate of £100 per month. This was opposed on behalf of the Applicant. Although the Tribunal accepted that the Respondent currently had very limited means, it considered that it would not be appropriate nor reasonable to issue a 'time to pay' order allowing payment by instalments of that amount, given the length of time the rent account had been in arrears, the payment history and the length of time it would take for the arrears to be cleared at that rate. Nor, however, did the Tribunal consider it appropriate to apply interest under Regulation 41A of the Regulations at the rate of 8% per annum on the sum outstanding, as had been sought in the application. It was noted that there was no such contractual rate of interest applying here and it was considered by the Tribunal that formal steps should perhaps have been taken earlier by the Applicant to recover the arrears which had been accruing since 2018 and before they reached the level they had.
4. The Tribunal concluded that, in the circumstances, an order in the increased principal sum sought of £10,334 should be made today.

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.

Nicola Weir

Legal Member/Chair _____

18 June 2024

Date