



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/24/0519

Re: Property at 32 Ashvale Place, 1st Floor Right, Aberdeen, AB10 6QA (“the Property”)

Parties:

James Cordiner & Son Limited, 50 Sinclair Road, Aberdeen, AB11 9PN (“the Applicant”)

Mhamad Ahmad, 32 Ashvale Place, 1st Floor Right, Aberdeen, AB10 6QA (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Gordon Laurie (Ordinary 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 in the sum of £4,675 with interest at the rate of 4% per annum from 3 July 2024 be granted against the Respondent.

- 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. The tenancy in question was a Private Residential Tenancy (“PRT”) by the Applicant to the Respondent commencing on 2 December 2021.
- 2) The application was dated 31 January 2024 and lodged with the Tribunal on that date. The application sought payment of arrears of £2,550 “with interest thereon at a rate ordered” by the Tribunal. The lease for the Tenancy accompanied the application and it detailed a rental payment of £425 payable in advance on the 2nd of each month.

- 3) Prior to the case management discussion (“CMD”) we were provided with an updated rent arrears statement showing rent due to 1 July 2024 in arrears of £4,675, with the last rent payment made on 2 July 2023, being 11 months of arrears. This was lodged by email with the Tribunal on 18 June 2024 and was intimated to the Respondent by email at the same time, along with intimation of a motion to amend the sum sought to £4,675 (as well as reference to an intention to seek a further amendment at the CMD should rent not be paid on 2 July 2024).

The Hearing

- 4) The matter called for a CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 3 July 2024 at 10:00. We were addressed by Aaron Doran, solicitor, Raeburn Christie Clark & Wallace LLP on behalf of the Applicant. There was no appearance from the Respondent.
- 5) We were informed by the clerk that no contact had been received from the Respondent (or on their behalf) with the Tribunal. The Applicant’s agent said that no communication had been received from the Respondent since his firm commenced acting. He knew of some contact between the Respondent and the letting agent acting in regard to repairs, with no recent contact in regard to the arrears. Previous contact on the arrears had ceased around the expiry of a Notice to Leave (which was the subject of a conjoined eviction application: EV/24/0518). The Applicant’s agent referred to three points in particular:
 - a) The Respondent had paid on time until August 2023. When the rent due on 2 August 2023 was missed, the Respondent explained to the Letting Agent that he had lost his job. There was a discussion that he might defer payment of the August rent payment until September 2023, which he would then pay from a student loan (as he was believed also to be a student). The Respondent thereafter made contact to say that he would be unable to pay from the student loan after all, as he required to use that money for essential living expenses.
 - b) The Letting Agent provided the Respondent with information as to potential sources of advice, and encouraged him to contact advice agencies. The Respondent responded to the Letting Agent to say: “I refuse all help.”
 - c) After the expiry of the Notice to Leave, the Respondent made contact with the Letting Agent to say that he had contacted the local authority in regard to seeking rehousing but had been informed by them that no assistance could be given until he was evicted.The Applicant’s agent knew of no other contact since then, and confirmed that there had been no response to his email of 18 June 2024 intimating the intended amendment.
- 6) We considered that the Respondent had received clear intimation of the CMD by the Sheriff Officer instructed by the Tribunal and, having not commenced the CMD until around 10:05, we were satisfied to consider the application in the Respondent’s absence. In any case, no attempt was made by the Respondent (nor anyone on his behalf) to dial in late to the CMD.

- 7) During oral submissions at the CMD, and further to the Tribunal members' own investigations, it was noted that title to the Property appeared to have very recently transferred from the Applicant (on 28 June 2024) to a new owner: Cordiner Holdings Limited, being a company registered under the Companies Act (company no 15767444) and having its registered office at 70 St Mary Axe, London, EC3A 8BE. The Applicant's agent explained that the two companies had common directors and shareholders, and that Cordiner Holdings Limited was an attempt by the owners to build up a separate property company, as James Cordiner & Sons Ltd was a trading company in an unconnected field. Though amendment of the applicant was sought in the conjoined eviction application, no amendment was sought in this application for arrears. Further, after due consideration, the Applicant's agent made clear that an order was sought only in respect of arrears falling due prior to 28 June 2024.
- 8) At the CMD, the Applicant's agent confirmed that the application for an order for payment of rent arrears was still insisted upon and at the increased arrears of £4,675 in respect of rent due through to 1 July 2024, in terms of the rent statement provided on 18 June 2024. The Applicant's agent was satisfied that all other sums under the Tenancy would now fall to be pursued as necessary by the new landlord, Cordiner Holdings Limited. (The Applicant's agent confirmed that no rent had been paid to Cordiner Holdings Ltd or the Applicant in respect of the arrears to 1 July 2024 or the rent that had just fallen due on 2 July 2024.) We were satisfied to grant the amendment in the sum sought, it having been intimated by email on the Respondent in advance.
- 9) In respect of interest, the Applicant's agent moved for 4% per annum from the date of the decision as a reasonable rate. He accepted that the Tenancy Agreement lacked any contractual provision for interest.
- 10) No motion was made for expenses.

Findings in Fact

- 11) On or about 15 November and 2 December 2021 the Applicant let the Property as a Private Residential Tenancy to the Respondent under a lease with commencement on 2 December 2021 ("the Tenancy").
- 12) In terms of clause 8 of the Tenancy Agreement, the Respondent required to pay rent of £425 a month in advance on the 2nd day of each month.
- 13) On 31 January 2024, the Applicant raised proceedings against the Respondent for an order for payment of the rent arrears of £2,550 with interest.
- 14) Arrears as at the date of lodging the application, 31 January 2024, were £2,550.
- 15) As of 3 July 2024, the Respondent remained in arrears of rent for the period to 1 July 2024 in the amount of £4,675.

- 16) The Respondent does not claim to have paid any amount of the said arrears of £4,675 for the period to 1 July 2024.
- 17) On 28 June 2024, the Applicant transferred title to the Property to Cordiner Holdings Limited.
- 18) Intimation of the date and time of the CMD was given to the Respondent by Sheriff Officer on 29 May 2024.

Reasons for Decision

- 19) The application was in terms of rule 111, being an order for civil proceedings in relation to a PRT. We were satisfied, on the basis of the application and supporting papers, that rent arrears of £4,675 were due for the period to 1 July 2024 and remained outstanding as of today.
- 20) No defence was made by the Respondent to any part of the application. (There was no appearance or defence to the conjoined application for eviction either.)
- 21) The question arose during the CMD whether it was correct to grant the order to the Applicant in consideration of the transfer of title. Reference was made to section 45 of the 2016 Act in support of the amendment in the conjoined eviction case. The Applicant's agent knew of no assignation of the right to collect outstanding arrears made by the Applicant to the new landlord. Further, he confirmed that no intimation had yet been made on the Respondent of the change of landlord.
- 22) We were satisfied that the effect of section 45 is principally to make clear (lest dubiety arise under the *Leases Act 1449* or any other legal principle or provision) that PRTs do not terminate if there is a change of landlord. There was nothing to support a broader reading of section 45 that would suggest that it operated statutorily to assign (and without the need for intimation on the debtor) obligations to pay historic liabilities previously due to the old landlord onto the new landlord. We held the Applicant's motion to seek payment to the Applicant, as the previous landlord, for all rent that should have been paid to it prior to Cordiner Holdings Ltd's date of entry of 28 June 2024 was well made.
- 23) The application, supplemented by the updated rent arrears information, clearly set out the sums sought and we were satisfied that the necessary level of evidence for these civil proceedings had been provided. We were satisfied to grant interest at 4% per annum as a reasonable rate.
- 24) 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. We were thus satisfied to make a decision at the CMD to award the sum of £4,675 against the Respondent with interest at 4% per annum from 3 July 2024. This is an order restricted to sums due under the Tenancy to the Applicant only, and in regard to rent arrears up to 1 July 2024.

Decision

- 25) In all the circumstances, we were satisfied to make the decision to grant an order against the Respondent for payment of £4,675 with interest at the rate of 4% per annum from today's date.

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.



3 July 2024

Legal Member/Chair

Date