



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 Rules of Procedure 2017.

Chamber Ref: FTS/HPC/CV/23/1597

Re: Property at 13 Lade Braes Lane, St Andrews, KY16 9ET (“the Property”)

Parties:

Mr John Cuthill, Cherrybank, Brunton, Cupar, KY15 4NB (“the Applicant”)

Mr Mihkel Vestli, Mr Gavin Irvine, 13 Lade Braes Lane, St Andrews, KY16 9ET (“the Respondents”)

Tribunal Members:

Fiona Watson (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondents, jointly and severally, for payment of the undernoted sum to the Applicant:

Sum of ONE THOUSAND FIVE HUNDRED AND SIXTY-ONE POUNDS AND SIXTY-FIVE PENCE (£1,561.65) STERLING

- **Background**

1. An application dated 16 May 2023 was submitted to the Tribunal under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking a payment order against the Respondents in relation to rent arrears accrued under a private residential tenancy agreement.
2. A Case Management Discussion (“CMD”) took place on 9 October 2023 by conference call. The Applicant was represented by their letting agent, Mr Sinclair of Thistle Property and Letting Limited. There was no appearance by

or on behalf of either of the Respondents. The application had been intimated on each of the Respondents by Sheriff Officer on 30 August 2023. The Tribunal was accordingly satisfied that the Respondents had been duly notified of the date and time of the CMD and that the CMD could proceed in the Respondents' absence.

3. Prior to the CMD, on 12 September 2023 the second-named Respondent emailed the Tribunal administration seeking that the application be dismissed on the basis that a separate application had been raised by the Respondents against the Applicant's representative under case reference FTS/HPC/LA/23/1085, with said application seeking an order that the Applicant's representative had breached the Letting Agent Code of Practice.
4. The Applicant's representative moved for the order for payment to be granted as set out in the application. The parties had entered into a Private Residential Tenancy Agreement. The Applicant's representative had taken over management of the Property in August 2021. They had been advised by the previous agent that the rent under the tenancy agreement was £975 per month. A rent increase notice was served to increase the rent to £1,300 per month. This was opposed by the Respondents and ended up before the First-tier Tribunal for determination. During the course of those proceedings the Respondents themselves had produced evidence that the rent had been previously increased to £1,100 from September 2021. This was unknown to the Applicant's representative. The Applicant had been unwell and had not noticed the shortfall in payment. The Respondents had only been paying £975 per month. The Tribunal held that the rent should be increased to £1,300 effective 15 September 2022. It was submitted that following the Tribunal's determination of the rent increase to £1,300 effective 15 September 2023, the Respondents had been paying same. The Applicant's representative submitted that the Respondents had accrued an arrear of rent between 1 September 2021 and 15 September 2022 (being the shortfall between £1100 per month due and £975 per month paid) and despite requests, the Respondents had failed to make payment of same. The arrears accrued were £1561.65.
5. The Respondents had not set out either in writing, or verbally at the CMD when given the opportunity to do so, the basis of any defence to the application before the Tribunal.
6. The Tribunal was satisfied that the Applicant was entitled to the sum as sought. The Tribunal was satisfied on the basis of the evidence before it, and specifically the decision of the Tribunal of 11 January 2023 and the rent increase notice of 9 October 2020, that the Respondents were obliged to make payment of rent in the sum of £1,100 per month by virtue of the said rent increase notice issued, and had failed to do so. They had accordingly accrued arrears amounting to £1,561.65 and which fell lawfully due to be repaid to the Applicant. The Tribunal was not satisfied that there was any stateable defence to the application before it. Whilst it noted the email of 12 September 2023 (as referred to at paragraph 3 above), this email did not set out any defence to the application, nor provide any specification as to whether the arrears being sought were in dispute, or the basis of any such dispute. Said email referred to

a separate letting agent application between the Respondents and the Applicant's agents, an application to which the Applicant is not a party. The Tribunal therefore was not persuaded that there was any reason why a decision should not be made today on the basis of the evidence already before it, and in the absence of any stated defence by the Respondents.

7. The Tribunal granted an order against the Respondents for payment of the sum of £1,561.65 to the Applicant.

- **Application for Recall:**

8. On 16 October 2023 the second-named Respondent, Mr Gavin Irvine, lodged an application (by email) seeking recall of the decision, stating as follows:

"We believe it is in the interest of justice for this case to be recalled so that we can present our evidence. We have found reading the decision that there are at least one error in the facts, as well as significant context missing. The obvious error is that the rent was not increased on 1 September 2021, rather occurred on 1 March 2023.

Furthermore, this issue of the disputed rent amount has been raised by us (the respondents: Gavin Irvine, and Mihkel Vestli) in a predated case (ref: FTS/HPC/LA/23/1085). The CMD for this case was held on 15 September 2023 and was attended by Mr Jim Sinclair. In that case, we have brought the disputed £1,561.65 up with Mr Sinclair presenting his side of the story and us ours. The CMD ended in the decision to have a full hearing on the matter scheduled for 8th of December. We understand that this disputed sum as well as several other issues will be resolved at this hearing.

We apologize to the Tribunal for not attending the CMD for this case. We believed that this case represented a counter-sue by Mr Sinclair, and that the issue was already set to be heard and therefore did not require a second case. However, since the tribunal has chosen to hear this case we believe it in the interest of justice to allow us to present our side of the story, or allow for the predated case to settle the issue."

9. The Tribunal considered matters in terms of the provisions of Rule 30 of the Rules which states as follows:

30 (1) In relation to applications mentioned in Chapters 4, 6, 8, 11 and 12 of Part 3 of these Rules, a party may apply to the First-tier Tribunal to have a decision recalled where the First-tier Tribunal made the decision in absence because that party did not take part in the proceedings, or failed to appear or be represented at a hearing following which the decision was made.

(2) An application by a party to have a decision recalled must be made in writing to the First-tier Tribunal and must state why it would be in the interests of justice for the decision to be recalled.

(3) An application for recall may not be made unless a copy of the application has been sent to the other parties at the same time.

(4) Subject to paragraph (5), an application for recall must be made by a party and received by the First-tier Tribunal within 14 days of the decision.

(5) The First-tier Tribunal may, on cause shown, extend the period of 14 days mentioned in paragraph (4).

(6) A party may apply for recall in the same proceedings on one occasion only.

(7) An application for recall will have the effect of preventing any further action being taken by any other party to enforce the decision for which recall is sought until the application is determined under paragraph (9).

(8) A party may oppose recall of a decision by— (a) lodging with the First-tier Tribunal a statement of objection within 10 days of receiving the copy as required under paragraph (3); and (b) sending a copy of the statement to any other party, at the same time.

(9) After considering the application to recall and any statement of objection, the First-tier Tribunal may— (a) grant the application and recall the decision; (b) refuse the application; or (c) order the parties to appear at a case management discussion where the First-tier Tribunal will consider whether to recall the decision.

10. The Tribunal determined that it is in the interests of justice that the application for recall of the Decision of the Tribunal dated 9 October 2023 is granted. The application was remitted back to a Case Management Discussion to take place by conference call.

- **Case Management Discussion**

11. A further Case Management Discussion (“CMD”) took place on 16 August 2024 by conference call. The Applicant was represented by their letting agent, Mr Sinclair of Thistle Property and Letting Limited. Mr Sinclair’s wife was also present on the call but did not participate in the CMD. Both of the Respondents were personally present. Mr Irvine made representations on behalf of both Respondents. Mr Vestli was present on the call but did not participate in the CMD.

12. The Applicant’s representative moved for the order for payment to be granted as set out in the application and as had been previously granted and subsequently recalled. The Applicant’s representative also moved for an award of interest to be made on the sum, at the rate of eight per cent per annum which he submitted was contained within the Agreement. It was submitted that he had omitted to ask for this at the previous CMD when the original order had been granted.

13. Mr Irvine on behalf of the Respondents submitted that the sum sought was not justified and that he considered that the contract was “pretty clear.” Mr Irvine submitted that the rent had originally been £975 per month. The rent was increased to £1,100 per month and the Respondents had received notification of that increase. It was submitted that the Respondents had paid rent at the increased sum of £1,100 for a number of months. When Thistle Property took over as letting agents, they received invoices for the rent at the previous level of £975. It was submitted that the Respondents had assumed that there had been a rent reduction. This was not queried with the letting agents. The Respondents did not consider that they were required to query this. It was

submitted that the letting agents, Thistle Property, had lied and had misled the Respondents as to the level of rent being due. The Respondents did not accept that an error on the part of the letting agents as regards their invoicing should result in the Respondents requiring to pay additional rent for the period in question. Mr Irvine submitted that he agreed that there was a contract between the Respondents and the Applicant for payment of rent at the rate of £1,100 per month for the period in question and that this had been made clear during previous tribunal proceedings. However, it was submitted that the Respondent had been misled by the letting agent that the rent had been reduced back to £975 per month. It was submitted that Mrs Sinclair had previously worked for the former letting agent (Rollos) for 10 years and ought to have known the correct rent to be charged for the Property.

14. Mr Irvine submitted that the Applicant's representative had made a "vindictive" application to the deposit scheme for return of deposit payment and that this had been challenged.

- Findings in Fact

15. The Tribunal made the following findings in fact:

- (i) The parties entered into a Private Residential Tenancy Agreement ("the Agreement") which commenced 1 July 2018;
- (ii) In terms of Clause 8 of the Agreement, the Respondents were obliged to pay a monthly rent of £975 to the Applicant until 31 August 2021;
- (iii) By virtue of a rent increase notice issued to the respondents, the rent increased to £1,100 per month from 1 September 2021;
- (iv) By virtue of the decision of the Tribunal dated 11 January 2023, the rent increased to £1,300 per month from 15 September 2022;
- (v) The Respondent had failed to make payment of rent as fell lawfully due, and had accrued arrears amounting to £1,561.65.

- Reasons for Decision

16. The Tribunal was satisfied on the basis of the evidence before it, and on the basis of the oral submissions made by parties at the CMD, that the Applicant was entitled to an order for payment in the sum sought.

17. The Tribunal considered the Respondents' submissions where it was accepted that the Respondents had received notification of the rent increase to £1,100 and that they had indeed paid this increased rent for a number of months, having accepted it fell due. The Tribunal considered the Respondents' position that upon the new letting agents (Thistle Property) taking over management of the Property and erroneously issuing invoices in the previous rent of £975, that the Respondents were entitled to assume that there had been a rent decrease. The Tribunal did not consider this to be a reasonable assumption to make, and that it would have been obvious to the Respondents that there had been an error. The Tribunal was satisfied with the explanations provided by the Applicant's representative that they were unaware that the rent was in fact £1,100 until the Respondents produced the previous rent increase notice as

part of tribunal proceedings relating to chamber reference FTS/HPCR/22/3145. The Applicant's representative's explanations that the landlord had been incapacitated and in hospital at the time and therefore unable to inform the respondents of the correct rent being £1,100 were reasonable and accepted by the Tribunal. The Tribunal was not satisfied that the Respondents had any basis for stating that they had been lied to or misled. It appeared to the Tribunal that the Respondents appeared to be effectively trying to take advantage of what was clearly a mistake on the Applicant's representative's part. The Tribunal was not satisfied that the Respondents' actions were reasonable, nor was the Tribunal satisfied that the error by the Applicant's representative affected there being a contractual obligation by the Respondents to pay the sum of £1,100 per month to the Applicant in terms of the contract between the parties. The Tribunal also took note of the fact that the Respondents submitted that they did in fact accept that there was a contract in place under which they were obliged to make payment of rent in the sum of £1,100. The Tribunal considered the basic principle of the law on error, and that an error by one party which is known to and taken advantage of by the other, puts the latter in bad faith.

18. The Tribunal also took note of the decision by a differently constituted tribunal in relation to application reference number FTS/HPC/LA/2/1085, which was an application raised by Mr Irvine and Mr Vestli against Thistle Property, and which application was referred to by both parties. Said application sought an order that the letting agent had breached the Letting Agent Code of Practice, and had been determined at Hearing following evidence being heard. The tribunal had determined that the letting agent had not failed to comply with the said Code. Paragraph 14 of said written decision said that the tribunal had considered evidence by the parties in relation to the issue of the rent increase. The Tribunal noted that in said application, the tribunal stated in their reasons for decision that Dr Irvine came across as someone who was hoping to capitalise on any mistake the respondent might have made (in that application the Respondent being Thistle Property). The tribunal also stated that it appeared clear to the tribunal that it would have been obvious to the applicants (being Mr Irvine and Mr Vestli in that application) that they were being charged the lower rent £975 instead of the higher figure of £1,100 when Thistle Property took over management of the property.
19. Whilst it's clear to the Tribunal that there had obviously been a breakdown in the relationship between the Respondents and the letting agent, it is important to note that the Applicant in this application is the landlord. Thistle Property act as the landlord's representative. The Tribunal is accordingly satisfied that there is a contractual basis between the tenants and landlord under the Agreement, for payment of rent at the sum of £1,100 during the period in question, and that this was not in dispute by the Respondents in their own submissions. Accordingly, the Tribunal was satisfied that the Applicant was entitled to the order as sought and that as there was no dispute as to the contractual agreement between the parties, there would be no merit in remitting matters to a hearing and that the decision could be made on the basis of the evidence and submissions heard. It was also noted that neither party sought a hearing be fixed.

20. The Tribunal refused the Applicant's motion for an award of interest on the basis that no interest had been sought in the original application lodged. Any amendment to the application should have been made in terms of Rule 14A of the Rules and this had not been followed. The Tribunal did not consider it reasonable to allow a late amendment to the application on the day of the CMD and accordingly the motion for an award of interest on the sum sought was refused.

- **Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order is granted against the Respondents, jointly and severally, for payment of the undernoted sum to the Applicant:

Sum of ONE THOUSAND FIVE HUNDRED AND SIXTY-ONE POUNDS AND SIXTY-FIVE PENCE (£1,561.65) STERLING

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.

Fiona Watson

Legal Member/Chair

Date: 16 August 2024