



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/24/0803

Re: Property at 27 Mossneuk Drive, Paisley, PA2 8PG (“the Property”)

Parties:

Mrs Helen Turner, 8 Wrigley Fold, Manchester, M24 5XA (“the Applicant”)

Mr Mark Pursley, 27 Mossneuk Drive, Paisley, PA2 8PG (“the Respondent”)

Tribunal Members:

Fiona Watson (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 is granted against the Respondent for payment of the undernoted sum to the Applicant:

**Sum of ONE THOUSAND SIX HUNDRED AND SIXTY POUNDS (£1,660)
STERLING**

- Background
 1. An application 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 Respondent in relation to rent arrears and other costs accrued under a private residential tenancy agreement.
- The Case Management Discussion
 2. A Case Management Discussion (“CMD”) took place on 9 August 2024. The Applicant represented herself. There was no appearance by or on behalf of the

Respondent. The Tribunal was satisfied that the application had been intimated on the Respondent by way of Sheriff Officer on 4 July 2024 and that the Respondent had sufficient intimation of the date and time of the CMD. Accordingly, the Tribunal was satisfied that the CMD could proceed in the Respondent's absence.

3. A separate application raised under Rule 109 and under case reference FTS/HPC/EV/24/0799 under which the Applicant was seeking a repossession order against the Respondent, was heard at the same time.
4. The Applicant moved the application, which had been drafted by her previous agent. The Tribunal noted that the application sought an order for payment to be granted in the sum of £2,860. The sum comprised three heads of claim being (i) rent arrears of £700, (ii) anticipated legal costs of £1500 + VAT and (iii) anticipated lock change costs of £360. The parties had entered into a Private Residential Tenancy Agreement ("the Agreement") which commenced 19 March 2020. The Respondent continued to reside in the Property, albeit only on a part-time basis as he had advised the Applicant that one week in two he resides with his partner and their child in his partner's property in Kilmarnock. At the point of raising the application, there were rent arrears due of £700. These had increased to £1,100 at the point of the CMD. Whilst evidence had been produced of legal costs having been incurred of £960 at the point of raising the application, no further evidence had been lodged of any further costs having been incurred. No costs had yet been incurred in relation to any change of locks, which had not yet been carried out. The Tribunal explained to the Applicant that she could not claim for anticipated costs, but only for losses that she could demonstrate had already been incurred.
5. The Tribunal noted that no application had been submitted under Rule 14A to increase the sum sued for in respect of the additional rent arrears incurred and therefore the Tribunal could not grant a higher sum than that sought in the application.

- Findings in Fact

6. The Tribunal made the following findings in fact:
 - (i) The parties entered into a Private Residential Tenancy Agreement ("the Agreement") which commenced 19 March 2020;
 - (ii) In terms of Clause 8 of the Agreement, the Respondent was obliged to pay a monthly rent of £450 to the Applicant;
 - (iii) The Respondent had failed to make payment of rent as fell lawfully due, and had accrued arrears amounting to £700 at the date the application was raised.
 - (iv) In terms of Clause 37 of the Agreement, the Respondent was obliged to "*pay the reasonable costs incurred by the Landlord, or his Letting Agent or professional advisers, in successfully enforcing or remedying a failure to comply with the obligations of the tenant under the agreement*";
 - (v) The Respondent was liable to pay the costs incurred by the Applicant in instructing legal advisers, in terms of Clause 37, in the sum of £960 as had been vouched for.

(vi) As no lock change had taken place and no loss incurred, no payment was due regarding this head of claim.

- Reasons for Decision

7. The Tribunal was satisfied that the Applicant was entitled to the sum of £1,660. The Respondent was obliged to make payment of rent in the sum of £450 per month under Clause 8 of the Agreement and had failed to do so. He had accrued arrears amounting to £700 at the date of the application and which fell lawfully due to be repaid to the Applicant. The Tribunal was satisfied that the Respondent was liable for the legal costs of £960 incurred and vouched for at the date of the application in terms of Clause 37 of the Agreement.

8. The application also sought interest on the sum sought at the judicial rate of interest of 8% per annum. The tribunal noted that it was not bound by the judicial rate of interest but agreed that it was reasonable to grant interest on the sum due. It noted that there was no provision within the Agreement which set an alternative contractual rate of interest recoverable, and considered that the rate of 5% was appropriate under the circumstances.

- Decision

9. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondents for payment of the undernoted sum to the Applicants:

Sum of ONE THOUSAND SIX HUNDRED AND SIXTY POUNDS (£1,660) STERLING together with Interest thereon at the rate of five per cent (5%) per annum running from the date of the decision of the First-tier Tribunal to grant this order, being 9 August 2024, until payment.

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: 9 August 2024