



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/24/1282

Re: Property at 28A Wilson Avenue, Kirkcaldy, KY2 5EG (“the Property”)

Parties:

Mr Manjeet Hayre, Mrs Tarandeep Kaur Hayre, 30 Billesdon Close, Leciester, LE3 9SH; 30 Billesdon Close, Leicester, LE3 9SH (“the Applicant”)

Mr Jake James, Miss Rachael Proudfoot, 28A Wilson Avenue, Kirkcaldy, KY2 5EG; 28A Wilson Avenue, Kirkcaldy, KY2 5EG (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for payment of NINE THOUSAND AND NINE HUNDRED AND SEVENTY-FIVE POUNDS (£9,975.00) STERLING in favour of the Applicant against the Respondent.

Background

1. An application had been received under Rule 111 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for payment.
2. The application contained: -

- a. the tenancy agreement,
 - b. the notice to leave with evidence of service
 - c. section 11 Notice with evidence of service
 - d. rent statement
 - e. pre-action requirement letters.
3. A case management discussion took place on 10 September 2024. In attendance was the applicant's agent, Ms Donnelly from T C Young. The respondents also appeared.
 4. Ms Donnelly had submitted papers to amend the sum sought. They had been sent to the respondents on 19 August 2024. The respondents confirmed that they had received those papers.
 5. Ms Donnelly advised that she sought to amend the sum sought at the hearing as a further month's rent was owed since the letter of 19 August 2024. She moved to amend the payment order to £9975. There was no objection to her verbal motion by the respondents. The tribunal granted this amendment.

Discussion

6. The applicant's agent advised that the applicants were seeking an order for recovery of the possession of the property under the ground 12A (you have substantial rent arrears equivalent to 6 months' rent).
7. She also sought an order for payment of outstanding rent arrears totalling £9975 together with interest at 8% from the date of the decision.
8. The applicant's agent advised that their arrears were at a very significant level. She advised that it would be reasonable for the order to be granted given the significantly high level of arrears outstanding and further, as there had been no payments to rent since February 2023. She advised that the applicants had

made efforts to engage with the respondents, but these attempts have been unsuccessful. She advised that the applicants had made contact with the local authority as they understood that there had been a Universal Credit application made in March 2023, but the council had said that they were not processing any claim.

9. She advised that there had been no contact with the respondents about the arrears. She understood that the respondents had contacted the Citizens Advice Bureau and had been told not to leave the property until an order had been granted by the tribunal at which time the local authority may assist them in obtaining alternative accommodation.
10. It was her submission that the fact that the respondents were not opposing either order, had admitted the arrears were significant, and that they had been outstanding for some time, then it would be reasonable to grant the order for eviction.
11. She noted that the respondents had one child of around one years of age living in the property but notwithstanding that fact she submitted it was still reasonable to get out the order for eviction.
12. She advised that the applicants had two children, and the applicant had recently had a heart attack. This applicant relied on rental income to support his family and the ongoing arrears were causing financial difficulties to the applicant and stress.
13. The agent advised that she was also seeking interest of 8% on the payment order. She confirmed that it was not contractual interest that was being sought and she accepted it was subject to the discretion of the tribunal in terms of any award of interest. She submitted that the arrears were large, and it would take some time for them to be repaid. It was appropriate in all the circumstances for interest to be awarded.

14. The agent advised that the applicant has other properties over and above this property in this application.
15. The respondents advised that they were not opposing the application for eviction and further they were not opposing the application for a payment order or the award of interest as sought by the applicant.
16. The respondents advised that she had fallen pregnant and at that time both herself and her partner Mr. James had lost their jobs. This had led to them getting into financial difficulties. They had made a claim for Universal Credit. She advised that she had emailed the letting agent regarding this fact. She had had trouble getting Universal Credit. She said the benefits obtained were not enough to support the family and the housing element did not cover the full rent. They could not afford the rent and accordingly any payments that they had received from universal credit had been retained and used to live off. They had been in touch with the local authority, and they were waiting on the eviction notice at which time they were hopeful that the local authority would find them suitable accommodation. The respondent advised that Mr James was still receiving benefits at the present time, and she was now working. There was therefore still some Universal Credit coming into the household, the amount depended upon how much she earned. She advised that the couple had other debts and were currently seeking money advice from the Citizens Advice Bureau about trying to sort out all their debts. She confirmed that she had one child of one years of age.

Findings in Fact

17. The Tribunal found the following facts established: -
18. There existed a private residential tenancy between Manjeet Hayre and Rachel Proudfoot and Jake James.

19. It had commenced on 4 November 2022.

20. The tenant was Rachel Proudfoot and Jake James.

21. The landlord was Manjeet Hayre.

22. The property was 28A Wilson Avenue, Kirkcaldy.

23. The tenancy stated that rent was £525 a calendar month payable in advance.

24. There was submitted a notice to leave dated 23 January 2024, stating that an application would not be made until 23 February 2024. It sought eviction under ground 12A rent arrears. It set out that the respondent had been in significant rent arrears at that time of £5775. A rent statement had been attached to it. The notice to leave had been emailed to each tenant. There was evidence of service.

25. As of 10 September 2024 the rent arrears were £9975.00.

Reasons for Decision

26. Section 71 of the 2016 Act provides the Tribunal with the power to deal with civil matters arising out of private residential tenancies, failure to pay contractual rent, is one of those matters.

27. The applicant's agent appeared. The respondents appeared. The respondents accepted that they owed rent of £9975.00.

28. The tenancy contract provided that rent of £525 per month was payable by the tenant. The tenants had failed to pay all or some of that rent. As of 10

September 2024, the respondents owed £9,975.00 in rent. They were in breach of contract with the landlord.

29. The applicant also sought an award of interest of 8% on the payment order. The agent confirmed that it was not contractual interest that was being sought and she accepted it was subject to the discretion of the tribunal in terms of any award of interest. She submitted that the arrears were large, and it would take some time for them to be repaid. She said it was appropriate in all the circumstances for interest to be awarded. We note that the respondents did not object to an award of interest being imposed and at a rate of 8%. We are not prepared to make any award of interest in this case. We were not sure that the respondents understood exactly what an award of interest was, and we place no weight on their lack of opposition to the imposition of such an order. In coming to our decision, we place weight on the fact that the applicant has a number of properties which he rents out and is therefore running a commercial business. The applicant could have had a condition in the contract which would have allowed him to seek interest. He did not do so. Given that he is a professional and experienced landlord, would have had the opportunity to have an interest condition in the lease and did not do so, we are not prepared to award interest on a discretionary basis.

30. Considering the papers and the oral submission by the applicant's agent, the tribunal was prepared to grant the order for payment of the amended sum sought; but refuses to make an award of interest.

Decision

31. The Tribunal grants an order in favour of the Applicant against the Respondent for payment of NINE THOUSAND NINE HUNDRED AND SEVENTY-FIVE POUNDS (£9,975.00) 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.

Melanie Barbour

10 September 2024

Legal Member/Chair

Date