



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/23/4243

Re: Property at 9 Millgate Road, Hamilton, South Lanarkshire, ML3 8JQ (“the Property”)

Parties:

Dr Niccolo Capanni, Ms Anita Claire Jamieson, 14 Hilton Street, Aberdeen, AB24 4QX (“the Applicant”)

Mrs Danielle McAvoy, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Jane Heppenstall (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 by the Respondent in the sum of £7,339.32 should be made in favour of the Applicant.

Background

1. By application received on 28 November 2023, the Applicant originally sought a payment order against the Respondent in the sum of £2,393.99 in respect of rent arrears. Supporting documentation was submitted with the application, including a copy of the tenancy agreement and a rent statement. An eviction application was lodged at the same time and has been conjoined with this application.
2. Following further procedure, the application was subsequently accepted by a Legal Member of the Tribunal acting with delegated powers from the Chamber President who issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations on 3 April 2024. The Respondent’s current address is

unknown and attempts by the Applicant to trace her through Sheriff Officers were unsuccessful. Notification of the application was made to the Respondent, together with the date, time and arrangements for a Case Management Discussion (“CMD”). Service was made on the Respondent by way of advertisement on the Tribunal’s website for the requisite period. The Tribunal also emailed the Respondent using the address provided by the Applicant in their application. No written representations were lodged by the Respondent prior to the CMD.

3. By email dated 2 August 2024, the Applicant’s representative submitted an application to amend the application in order to increase the sum sought to £7,339.32 being the amount owing as of that date, together with an updated Rent Statement in support. Said email was copied to the Respondent by the Applicant’s representative.

Case Management Discussion

1. A Case Management Discussion (“CMD”) took place by telephone conference call on 16 August 2024 at 10am, attended by both Applicants, who were represented by Miss Alexandra Wooley, Solicitor of BKF & Co. The commencement of the CMD was delayed for 5 minutes to allow an opportunity for the Respondent to join late but she did not do so.
2. Following introductions and introductory remarks by the Legal Member, Miss Wooley was asked to address the Tribunal on the application(s). By way of background, Miss Wooley confirmed that there have been no further payments received to the rent account since the updated rent statement of 2 August 2024. The amount outstanding in terms of arrears accordingly remains as £7,339.32. Miss Wooley advised that there had been antisocial behaviour in relation to the Respondent’s tenancy. The Applicants required to replace the main door of the Property in September 2023, as it had been damaged through antisocial behaviour. The Applicants’ letting agents contacted the Respondent as she was not present at the Property and she advised that she was currently staying with her mother. The letting agents offered her the keys so that she could access the Property in order to remove her belongings. She removed some items and attended again at the Property in January 2024 but, despite numerous attempts by the letting agents to contact the Respondent, she has failed to remove the remainder of her belongings or return the keys to them. There has been no further contact with the respondent since March 2024. The Respondent has not fully given up possession of the Property, necessitating an eviction order being sought. Rent arrears have continued to increase over this period which the letting agents have previously notified the Respondent she remains liable for.
3. Miss Wooley further explained that the Applicants wished to do things ‘by the book’ to keep themselves in the right legally and had no confidence that possession could be taken back in these circumstances. Although the Respondent had partly vacated in October 2023, Universal Credit payments in respect of the rent continued to be received until December 2023. As far as the Applicants were concerned, the Respondent had indicated that she still wanted

to access the Property and had retained the keys. She still has possessions in the Property. Applications were lodged with the Tribunal in November 2023, one of the grounds of eviction being that the Respondent was not occupying the Property. There were already substantial rent arrears owing at that time, as per the 'pre-action protocol' letters sent to the Respondent by the letting agent. No concrete reasons for the rent arrears or the Universal Credits payments stopping were provided by the Respondent to the letting agents. The Tribunal process took longer than would normally be expected to reach this stage and this was not due to any fault on the part of the Applicants.

4. The Applicant, Dr Capanni, also provided some further background information. He explained that they had had to attend during the night to secure the door in September 2023 due to damage caused by people attending at the Property who were known to the Respondent and trying to gain entry. The Respondent had gone to stay with her mother and there was some communication with the Respondent and her mother about her getting keys to the new front door, but no indication given at that time that this was to be a permanent arrangement. The letting agent has subsequently tried to contact the Respondent at her mother's address but been told that she is no longer there and that her mother's address was no longer to be used for contact. The Respondent's belongings which have not yet been removed include large items of furniture such as bunk beds, white goods and clothing. The Respondent initially moved into the Property with her two children but the Applicants are not aware whether they stayed with her all the time. There was also a male staying with her sometimes and a pet, according to neighbours. Dr Capanni confirmed that the Applicants have five other properties which they let out currently, although one of those has another tenant who is not paying rent.
5. Miss Wooley summed up in respect of the payment application, requesting that the Tribunal grant a payment order in the increased sum claimed of £7,339.32, plus interest thereon from the date of the order at the judicial rate of interest of 8%.
6. The Tribunal adjourned briefly to discuss and, on re-convening, advised that the Tribunal was persuaded to grant the payment order sought with interest, but at the rate of 4% rather than the 8% sought. Parties were thanked for their attendance.

Findings in Fact

1. The Applicant is the owner and the landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 16 February 2023.
3. The monthly rent in terms of the tenancy is £625.
4. There was a background of rent arrears, with rent payments being missed between March and August 2023.

5. Universal Credit payments towards rent then commenced and were received for the period August to December 2023.
6. The last payment into the rent account was on 8 December 2023 of £625.
7. No payments have been received since.
8. The Applicant's letting agent contacted the Respondent about the arrears on numerous occasions but were not given any explanation.
9. The Respondent left the Property in or around September 2023 to reside with her mother for a period but her present whereabouts are unknown.
10. Contact with the Respondent was maintained between September 2023 and March 2024.
11. The Respondent has not formally vacated the Property and has retained keys and left furniture and other belongings in the Property, despite several requests to fully vacate.
12. The tenancy is ongoing and the Respondent remains liable for rent until the tenancy is properly terminated.
13. The rent arrears outstanding when this application was submitted to the Tribunal on 28 November 2023 amounted to £2,393.99 and now amount to £7,339.32.
14. The Respondent has not submitted any written representations, nor sought time to pay, in respect of this Application.
15. The Respondent did not attend the CMD.
16. The sum of £7,339.32 is due and resting owing by the Respondent to the Applicant in respect of rent arrears incurred during the tenancy in terms of this application and has not been paid by the Respondent.

Reasons for Decision

1. The Tribunal considered all of the background papers, including the application and supporting documentation and the oral submissions made by the Applicant, Dr Capanni, and their legal representative at the CMD. The Tribunal noted that no representations had been made by the Respondent and that she did not attend the CMD, having been properly and timeously notified of same by way of advertisement on the Tribunal website for the requisite period from 12 July 2024 to 16 August 2024 inclusive, conform to Certificate of Service by Advertisement dated 28 November 2023. The Tribunal was satisfied that the application on behalf of the Applicant to increase the sum sought had been

made timeously in terms of the Regulations and, accordingly, the Tribunal permitted said amendment to be made.

2. The Tribunal considered that there was nothing to contradict the information from the Applicant and therefore no requirement to continue the application to an Evidential Hearing. The Tribunal was satisfied that the Respondent had not properly vacated the Property or given up possession and that the sum of £7,339.32 was due and resting owing by the Respondent in respect of unpaid rent due to the Applicant and that, in the circumstances, a payment order in terms of the amended application could properly be made at the CMD.
3. The Tribunal considered the request from the Applicant to apply interest on the principal sum from the date of the order until payment at the rate of 8% in terms of Rule 41A of the Regulations on the basis that 8% is the judicial rate of interest. Whilst the Tribunal considered it reasonable to exercise its discretion and apply interest in the circumstances of this case, the Tribunal considered the rate should be 4% per annum, given recent and current Bank of England base rates.

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.

Legal Member/Chair _____

16 August 2024
Date