



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/24/1080

Re: Property at 44 Auchinraith Avenue, Hamilton, ML3 0JQ (“the Property”)

Parties:

Mr Joseph Sander, 1 Fernhill Grange, Bothwell, G71 8SH (“the Applicant”)

Ms Claire Bachurzewski, 44 Auchinraith Avenue, Hamilton, ML3 0JQ (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal 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 should be made.

Background

1. The Applicant lodged an application on 3rd March 2024 under Rule 111 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) seeking payment of a sum of rent arrears.
2. Lodged with the Application were:
 - a. Copy Private Residential Tenancy commencing 15th July 2023 with rent of £650 per month;
 - b. Details regarding missed rental payments;
3. The Application was served on the Respondent by Sheriff Officer on 24th May 2024.

Case Management Discussion

4. The Case Management Discussion (“CMD”) took place by teleconference. The Applicant represented himself The Respondent also represented herself.
5. The Chairperson confirmed the purposes of a CMD in terms of Rule 17 of the Rules.
6. The Applicant asked that an order be granted for payment, in the amount of £650, being a missed rental payment for December 2023.
7. The Respondent said that she had made the payment in December 2023 as normal. She had a screenshot of it leaving her bank account. She said that she had emailed it to the Tribunal. The Clerk checked on the system but no email had been received.
8. The Chairperson asked if the Respondent’s bank had confirmed what account the payment had been sent to. She said that it was the same account that the other rental payments had been sent to.
9. The Chairperson was not satisfied that she had sufficient information to make a decision and decided to continue the CMD for the parties to make further investigation with their respective banks and to provide evidence. The Chairperson said she would issue a Direction.

Subsequent to CMD

10. The Tribunal issued Directions to each party.
11. In terms of the Direction the Applicant was to lodge Bank statements (not screenshots) covering the month before, the month when the alleged missed payment was due, and the month after, said documents to be lodged by 27th August 2024. On 1st September 2024 he lodged two bank statements, one for the period 1/11/23-30/11/23 and one for the period 1/12/23-31/12/23.
12. In terms of the Direction the Respondent was to lodge Bank statements (not screenshots) covering the month before, the month when the alleged missed payment was due, and the month after, and Correspondence from her bank, either by letter or email, confirming that they have investigated the missing payment and that it either has or has not been sent to the Applicant’s bank, said documents to be lodged by 27th August 2024. On 27th August 2024 the Respondent lodged some texts and emails, which could not be fully read by the Tribunal and two screenshots which appeared to be from a banking app but did not show the bank name, the account number or who the account belonged to. She did not lodge the statements she was directed to, nor did she lodge any correspondence from her bank.

Continued CMD

13. The continued Case Management Discussion (“CCMD”) took place by teleconference on 5th September 2024 at 10am. Neither party dialled in. The Clerk checked the system and the date and dial in details for the CCMD had been sent to each party. The line was kept open until 10.30am. Given that both parties had very recently sent documentation to the Tribunal the Chairperson, taking in to account the overriding objective of the Tribunal, decided to adjourn to a further CCMD.

Subsequent to Continued CMD

14. A further Direction was issued to the Respondent directing that the documentation she was directed to produce should be lodged with the Tribunal by 25th September 2024.

15. A fresh CCMD was fixed for 4th October 2024 and the parties were advised by email, dated 11th September 2024.

Further Continued CMD

16. The further continued Case Management Discussion (“FCCMD”) took place by teleconference on 4th September 2024 at 2pm. The Applicant dialled in and represented himself. The Respondent did not dial in and was not represented. The Chairperson was satisfied that the Respondent had received sufficient notification of the date and time of the calling, and having considered the overriding objective of the Tribunal to deal with proceedings justly, and in particular the duty to avoid delay, so far as compatible with the proper consideration of the issues.

17. The Applicant confirmed that he had still not received the missing payment of rent. He had not had any discussions with the Respondent, and no correspondence with her about it.

Findings In Fact

- i. The parties entered in to a Private Residential Tenancy agreement for the property;
- ii. The monthly rent was £650;
- iii. The Applicant did not receive a payment of £650 from the Respondent for the rent for December 2023.

Reason For Decision

18. The Tribunal considered that the Applicant was credible and reliable. He had no reason to make a false statement about a missing rent payment, or go to the length of raising Tribunal proceedings to recover it. He lodged bank statements which tended to show that the payment had not been received.

The Respondent lodged a screenshot showing a payment going out, but she did not lodge the documentation she was asked to provide, nor did she attend the CCMD or FCCMD. The Tribunal found that on the balance of probabilities the payment had not been received by the Applicant and was still due to be paid by the Respondent.

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.

Alison Kelly

Legal Member/Chair

Date: 4TH October 2024