



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) 2016 Act

Chamber Ref: FTS/HPC/CV/24/1634

Re: Property at 115 Stonylee Road, Cumbernauld, G67 2LR (“the Property”)

Parties:

Neagle Cathcart, 2a Westmount Park, Newtonards, County Down, BT23 4BP (“the Applicant”)

Oluseun Olukoya, 115 Stonylee Road, Cumbernauld, G67 2LR; and Yemibo Paula Chinakwe-Oladejo, 50 St. Margaret Crescent, Gravesend, Kent, DA12 4EH (“the Respondents”)

Tribunal Members:

Joel Conn (Legal Member) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. This is an application by the Applicant for civil proceedings in relation to a private residential tenancy in terms of rule 111 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”), namely an order for payment of rent arrears against a tenant (the first named Respondent) and a guarantor (the second named Respondent). The PRT in question was by the Applicant to the first named Respondent commencing on 1 September 2022, with the second named Respondent signing the Tenancy Agreement as guarantor.
2. The application was dated 10 April 2024 and lodged with the Tribunal on that date. The application sought payment of arrears of £1,350 (being the arrears said to be due as of 8 March 2024) and was accompanied by a rent statement showing irregular payments and over-payments from 1 December 2022 to 8 March 2024, resulting overall in there being two missed rental payments of

£675/month which had never been cleared. The rent stated in the Tenancy Agreement lodged was £675 a month due on the 1st of each month.

3. Shortly prior to the case management discussion (“CMD”) we received from the Applicant’s new agent an updated rental statement to 1 September 2024. This showed that arrears had reached a peak of £2,025 (that is three months of arrears) between May and July 2024 but further payments had since reduced this back to £1,350.
4. The application sought interest, but did not specify the amount. The Tenancy Agreement referred, in a long additional section after clause 38, to contractual interest of 4% per annum above the base rate of Royal Bank of Scotland plc.

The Hearing

5. The matter called for a CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 4 September 2024 at 14:00. We were addressed by John MacAulay on behalf of the Applicant. Mr MacAulay explained that he was a qualified solicitor but currently not in legal practice and was acting as a legal adviser to the Applicant. We noted that we held a mandate from the Applicant appointing Mr MacAulay and were satisfied that he was appropriately authorised. We were also addressed by the first named Respondent. He explained that the second named Respondent was not able to attend due to work commitments but that he represented her. We saw no mandate from the second named Respondent but accepted the first named Respondent’s representations for the second named Respondent in the absence of any appearance or submissions from her to the contrary.
6. The Tribunal’s clerk had arranged to forward the updated rent statement to the first named Respondent by email at the start of the CMD. We paused to allow him to review the document. On review of the document the first named Respondent confirmed:
 - a. He had fallen into arrears due to employment issues.
 - b. He accepted that the statement was accurate and that he was currently £1,350 in arrears.
 - c. He accepted that the Tenancy Agreement contained a contractual rate of interest of 4% above the base rate of Royal Bank of Scotland plc.
 - d. Neither he nor the second named Respondent opposed the application.The first named Respondent made submissions in regard to a payment proposal which – if followed – would repay the arrears within a short number of weeks. We considered this proposal as relevant to a conjoined eviction application (EV/24/2933) but noted that in respect of this application under Rule 111 the payment proposal did not amount either to a defence of this application nor a Time to Pay application (as, if followed, it would result in payment prior to any Time to Pay order being available for intimation and thus no order would be required).
7. No motion was made for expenses.

Findings in Fact

8. On or about 26 August 2022 the Applicant let the Property as a Private Residential Tenancy to the first named Respondent under a lease with commencement on 1 September 2022 (“the Tenancy”).
9. In terms of clause 8 of the Tenancy Agreement, the first named Respondent required to pay rent of £675 a month in advance on the 1st day of each month.
10. In the Tenancy Agreement following clause 38, in a section headed “Clear and Transparent Notification of Charges”, the Applicant and first named Respondent agreed that any rent payments over nine days in arrears would attract interest at the rate of 4% per annum above Royal Bank of Scotland plc.
11. The Tenancy Agreement contained guarantee provisions under which the second named Respondent guaranteed the liabilities of the first named Respondent under the Tenancy, such as payment of rent and interest.
12. Since 1 December 2022, the first named Respondent has failed to make payment on a number of occasions, and had then made overpayments of rent.
13. As of 4 September 2024, the first named Respondent is in arrears of rent overall of £1,350 in respect of rent due up to 30 September 2024.
14. The second named Respondent has made no payment against any liability under the guarantee in respect of the said arrears.

Reasons for Decision

15. The application was in terms of rule 111, being an order for civil proceedings in relation to a PRT. We were satisfied, on the basis of the application and supporting papers, that there were rent arrears as stated which, in any case, were admitted by the first named Respondent on behalf of the Respondents.
16. We were satisfied that there was unpaid rent of £1,350 for the period to 30 September 2024 and it all remained outstanding as of today, and was guaranteed by the second named Respondent. We were satisfied that the necessary level of evidence for these civil proceedings had been provided for an order at this figure.
17. We were satisfied that a contractual rate of interest had been agreed at 4% per annum above the base rate of Royal Bank of Scotland plc and that this interest rate further applied to any guarantee liability. This was, in any case, accepted by the first named Respondent on behalf of the Respondents.
18. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. We were thus satisfied to make a decision at the CMD to award the sum of £1,350 against the Respondents, being an order for rent arrears under the Tenancy to 30 September 2024 with interest from

today's date at the rate of 4% per annum above the base rate of Royal Bank of Scotland plc.

Decision

19. In all the circumstances, we were satisfied to make the decision to grant an order against the Respondents jointly and severally for payment of £1,350 with interest at the rate of 4% per annum above the base rate of Royal Bank of Scotland plc. from the date of the order.

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.

Joel Conn

4 September 2024

Legal Member/Chair

Date