



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/23/3586

Re: Property at 19 Cameron Drive, Auchinleck, KA18 2JE (“the Property”)

Parties:

Mr Shafiq Usman, 23 Catrine Road, Mauchline, KA5 6AA (“the Applicant”)

Ms Alanna Harrison, 19 Cameron Drive, Auchinleck, KA18 2JE (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Sandra Brydon (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 £4,035 should be made in favour of the Applicant.

Background

1. By application received on 10 October 2023, the Applicant originally sought a payment order against the Respondent in the sum of £4,050 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 initial 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 9 November 2023. 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 Sheriff Officers on 13 December 2023. No written representations were lodged by the Respondent prior to the first CMD on 31 January 2024 and she did not attend the CMD which was only attended by the Applicant’s legal representative, Mr Gilius. Both applications were adjourned on 31 January 2024 to a further CMD for further information to be provided by the Applicant and for the rent arrears figure to be updated.

3. Further CMDs were scheduled to take place on 26 February 2024 and 13 June 2024 but both were postponed at the request of the Applicant’s legal representative. A further CMD was scheduled for 22 October 2024 and details of same were notified to the Respondent by post on 17 September 2024.
4. On 13 June 2024, the Applicant’s legal representative lodged two Affidavits by email, one of the Applicant and one of his brother, Mr Imran Shafiq detailing the background to the applications, the rent arrears, attempts to engage with the Respondent regarding the matter, personal/financial information pertaining to the Applicant and some details regarding the Respondent’s circumstances (as far as known to the Applicant). On 5 September 2024, the Applicant’s legal representative emailed the Tribunal with further information, including an updated rent statement, an application to amend the sum claimed to £4,305 and copies of letters sent to the Respondent by the Applicant’s solicitors both dated 5 September 2024, attaching copies of the application to amend, the tenancy agreement, the updated rent statement and information in respect of the ‘pre-action protocol’.
5. All further information received was also circulated by post to the Respondent by the Tribunal. There was no engagement with the Tribunal, nor representations lodged with the Tribunal, by the Respondent prior to the further CMD on 22 October 2024.

Case Management Discussion

1. The Case Management Discussion (“CMD”) took place by telephone conference call on 22 October 2024 at 10am, attended only by the Applicant’s legal representative, Ms Gillian McBlane of Black Hay solicitors. 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 and mention of the procedural background, Ms McBlane was asked to address the Tribunal on both applications. By way of background, Ms McBlane confirmed that there was a high level of cross-over in terms of the applications. She confirmed that, at the CMD in January 2024, the pre-action protocol had been discussed and the fact that the Applicant and his brother had tried to engage with the Respondent many times regarding the rent arrears. Ms McBlane referred to the detailed Affidavits lodged with the Tribunal since, from the Applicant and his brother, outlining the background circumstances and the Applicant’s own financial circumstances. She also referred to the letters her

firm had sent to the Respondent, one of which dated 5 September 2024, fulfilled the pre-action protocol requirements, in particular including a lot of information on various sources of help available to the Respondent regarding rent arrears, debt and housing advice. Ms McBlane explained that, since the date of the updated rent statement, one further payment has been received from the DWP on behalf of the Respondent in October 2024 in the sum of £475. The current level of arrears is accordingly now £4,035 and it is an order in that sum which is now sought. Ms McBlane explained that the difficulty for the Applicant has been that the Respondent has never engaged, either with him or with her firm and they do not therefore know the explanation for the rent arrears or the reason for the various gaps in payments being received from the DWP. The DWP have not provided any information direct to the Applicant regarding the matter either. Ms McBlane confirmed that if the Respondent had engaged, there may have been the possibility of a payment arrangement being considered by the Applicant. However, the lack of engagement, explanation or payment proposals have led to the Applicant having no option but to seek these orders. Ms McBlane has no explanation as to why the October payment received was in the sum of £475, when previous payments from the DWP were £425.

3. The Tribunal adjourned briefly to discuss and, on re-convening, advised that the Tribunal would grant the payment order sought in the sum of £4,035. Ms McBlane was thanked for her 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 1 December 2022.
3. The monthly rent in terms of the tenancy is £112.50 per week (£450 per month).
4. There was a background of rent arrears, with no rent being paid for approximately the first 6 months of the tenancy, then a further period with rent payments being missed in February, March and April 2024.
5. The Respondent is understood to be in receipt of benefits and payments towards rent have been received direct from the DWP.
6. Rent payments of £425 per month were received from the DWP from May 2024 to date, with the most recent payment being £475 received in October 2024.
7. The Applicant and his solicitors have sought to contact the Respondent numerous times regarding the rent arrears but have not been given any explanation, nor payment proposals in respect of the arrears.

8. The rent arrears outstanding when this application was submitted to the Tribunal on 10 October 2023 amounted to £4,050, rose to £4,305, and now amount to £4,035.
9. The Respondent has not submitted any written representations, nor sought time to pay, in respect of this Application.
10. The Respondent did not attend the CMD.
11. The sum of £4,035 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 on behalf of the Applicant by his solicitor, Ms McBlane at the CMD. The Tribunal noted that no representations had been made by the Respondent and that she did not attend either of the CMDs, having been properly and timeously notified of same. 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 but that, as the arrears had subsequently reduced to a sum slightly less than claimed in the application, the amendment was not necessary.
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 vacated the Property, was still liable for rent and that the sum of £4,035 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.

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.

Nicola Weir

Legal Member/Chair

22 October 2024
Date

