



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/24/1225

Re: Property at 28A Gillies Street, Troon, KA10 6QL (“the Property”)

Parties:

Ringley Park Properties Ltd, Office 2, Room 8 Kirkhill House, 81 Broom Road East, Newton Mearns, Glasgow, G77 5LL (“the Applicant”)

Mr Steven George McVey, 15d Campbell Court, Ayr, KA8 0SE (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Elaine Munroe (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment in the sum of Four thousand eight hundred and eighty six pounds and fifty eight pence (£4886.58) Sterling

Background

1. By application to the Tribunal the Applicant sought an order for payment against the Respondent in respect of unpaid rent under Rule 111 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”) and section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant provided a copy of the tenancy agreement between the parties dated 11 and 12 June 2020 and a rent statement.
2. By Notice of Acceptance of Application dated 18 June 2024 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. The application was therefore referred to a Case Management Discussion (“CMD”) to take place by teleconference on

18 September 2024. Notification was given to the parties in accordance with Rule 17(2) of the Rules. Both parties were invited to make written representations in advance of the CMD.

3. On 2 September 2024 the Tribunal received an email from the Applicant with an updated rent statement.
4. On 6 September 2024 the Tribunal received an email from Ayr Housing Aid Centre SCIO ("AHAC") on behalf of the Respondent. AHAC provided a mandate from the Respondent authorising them to represent him in the proceedings together with a written response to the application. In summary AHAC stated that the Respondent accepted the existence of the arrears, however the Respondent denied that these were due as a result of the condition of the property. Following a ceiling collapse in the back bedroom of the property there was a recurrence of damp and mould, with fungus growing inside of the property. The Respondent had therefore intended to withhold the rent in an attempt to have the issues addressed by the Applicant. The Respondent's position is that it took six months for the ceiling to be repaired. AHAC advised that the Respondent also suffered from poor mental health which stemmed from him witnessing his nephew suffering a fatal epileptic episode in the property, and that this mental health had deteriorated due to the condition of the property.

The Case Management Discussion

5. The Case Management Discussion took place on 18 September 2024. Ms Angela Lowe represented the Applicant. Mr David Anderson of AHAC represented the Respondent who was not in attendance.
6. Ms Lowe confirmed that the Applicant sought a payment order in the amended sum of £4676, following submission of the updated rent statement by email dated 2 September 2024. The Respondent had been reluctant to communicate with the Applicant and make payments towards the rent account. The Applicant had been unable to establish his source of income. They were under the impression that the Respondent was in receipt of benefits. They were then told he had a job, and then told he was not in employment. The Applicant had made an application for direct payments from the Respondent's universal credit on a number of occasions but this had been refused. The Applicant did not know the specific reason for this.
7. Mr Anderson explained that the arrears had primarily accrued due to a repairing issue that had persisted for a lengthy period of time. A ceiling had come in which resulted in severe problems with damp. The arrears accrued in an attempt by the Respondent to get the repairs carried out. Mr Anderson confirmed that the Respondent had now left the property, having secured accommodation with the local authority in Ayr. With regard to the Applicant's request for amendment of the sum due, Mr Anderson explained that he had not had sight of the updated rent statement. It was noted that this was submitted in advance of him taking on the role of the Respondent's representative. The Tribunal confirmed that it would send on a copy to Mr Anderson for his records.

8. Ms Lowe advised that the Applicant had information regarding the repairs that she could submit to the Tribunal. The Applicant did not believe any rent abatement was due.
9. Mr Anderson noted that the Applicant's request for direct payments had been refused, which suggested there may have been an issue with the repairing standard. He requested a full hearing to give the Tribunal the opportunity to explore all of the evidence from the parties before making a decision.
10. Having heard from the parties, the Tribunal noted that there were issues to be resolved as follows:-
 - *Was the Landlord in breach of their obligations under the tenancy agreement in terms of the responsibility to ensure the property complies with the Repairing Standard; and*
 - *In the event that the Tribunal finds the Landlord to be in breach of their obligations, what level of rent abatement is justified in this case.*
11. The Tribunal therefore fixed a hearing in the matter. A Direction was issued requiring parties to lodge any documentary evidence to support their position and a list of any witnesses no later than 28 November 2024.
12. On 26 November 2024 the Tribunal received an inventory of documents from the Applicant together with a response to the Respondent's proposed defence. The Applicant confirmed that the arrears as at the date of termination of the tenancy amounted to £4886.58. The Applicant's submissions were intimated to the Respondent's representative, AHAC.
13. On 4 December 2024 the Tribunal received an email from Mr Anderson of AHAC advising that he was withdrawing from acting for the Respondent. He explained that he had attempted to contact the Respondent via telephone, letters and email, to which there had been no response. Mr Anderson confirmed that all documents regarding the hearing had been sent to the Respondent at his new address. The Tribunal subsequently intimated Mr Anderson's withdrawal to the Respondent by post.
14. On 5 December 2024 the Applicant provided a list of repairs that they stated were necessary following the termination of the tenancy due to damage by the Respondent.

The Hearing

15. The hearing took place on 12 December 2024 by teleconference. Ms Lowe represented the Applicant. The Respondent was not present nor represented. The Tribunal noted the withdrawal of his representative. The Tribunal also noted that the Respondent had been made aware of the withdrawal and had been provided with the hearing paperwork. The Tribunal was therefore satisfied that the Respondent had been given notification of the hearing under Rule 24(1) of the Rules and therefore determined to proceed in his absence.

16. Ms Lowe explained that the Applicant was seeking to recover the costs of the repairs to the property from the Respondent, however they would do so by way of a separate application to the Tribunal. Insofar as the hearing was concerned the Applicant sought an order for payment in the sum of £4886.58. Ms Lowe referred to the paperwork that had been submitted in support of the claim.

Findings in Fact

17. The Applicant and Respondent entered into a tenancy agreement which commenced on 12 June 2020.
18. In terms of Clause 8 of the said tenancy agreement the Respondent undertook to pay rent at the rate of £375 per month.
19. The tenancy between the parties terminated on or around 16 October 2024.
20. As at the date of termination arrears in the sum of £4886.58 were outstanding.
21. Despite repeated requests the Respondent has refused or delayed in making payment of the sum due.

Reasons for decision

22. The Tribunal was satisfied that it could reach a decision on the application following the hearing in the absence of the Respondent. He had been given the opportunity to put his case forward but had failed to engage with his representative, and had failed to attend the hearing. The Tribunal therefore considered that it would be the interests of justice to proceed to a decision, taking into account the overriding objective to avoid delay insofar as proper consideration of the issues in this case.
23. The Respondent had provided no evidence to support the proposed defence put forward on his behalf by Mr Anderson at the CMD. He had not attended the hearing therefore the Tribunal had been unable to question him further on this. Accordingly the Tribunal concluded that it was unable to give any weight to the Respondent's submissions on the matter. The Applicant had submitted evidence to contradict the Respondent's proposed defence, which included correspondence between the parties in which the Respondent acknowledged that the debt was due and evidence of the Applicant having responded promptly to reported repairs. The Tribunal therefore preferred the Applicant's position over that put forward by the Respondent.
24. The Tribunal was therefore satisfied, based on the tenancy agreement and rent statement produced by the Applicant, that the Respondent had a contractual obligation to pay rent at the rate of £375 per month and that the rent was lawfully due. The Tribunal was also satisfied that the Respondent had failed to make payment of the contractual rent, resulting in arrears of £4886.58 as at the date of termination of the tenancy. The Tribunal was content that the Respondent had been given notification of the Applicant's intention to seek a payment order in that sum based on their submissions received on 26 November 2024, which had been intimated to the Respondent.

25. The Tribunal therefore agreed to amend the sum claimed under Rule 14A to £4886.58 and determined to make an order for payment in that sum against the Respondent.
26. The decision of the Tribunal was unanimous.

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.

Ruth O'Hare

12 December 2024

Legal Member/Chair

Date
