



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 71(1) of the Private Housing
(Tenancies) (Scotland) Act 2016 (Act)**

Chamber Ref: FTS/HPC/CV/24/1193

**Re: Property at 5 Burns Street, High Valleyfield, Dunfermline, KY12 8RX (“the
Property”)**

Parties:

**Mrs Alice Callaghan, Mr Patrick Callaghan, 73 Arthur Street, Dunfermline, KY12
0JJ (“the Applicants”)**

**Miss Stacy O'Neill, Mr Graham Dickson, 48 Leighton Street, High Valleyfield,
KY12 8TP (“the Respondents”)**

Tribunal Members:

Alan Strain (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for payment be granted in the sum of
£5,501.26.**

Background

This is an application under Rule 111 of ***The First-tier Tribunal for Scotland
Housing and Property Chamber (Procedure) Regulations 2017 (Rules)*** and
section 71(1) of the Act in respect of a claim for payment of alleged rent arrears.

The Tribunal had regard to the following documents:

1. Application received 12 March 2024;
2. Lease commencing 28 May 2019;
3. Correspondence;
4. Statement of Rent Arrears;
5. CMD Note of 5 August 2024;
6. Further submissions from Applicant dated 23 October and 11 December 2023.

Hearing

The case called for a Hearing by conference call on 17 December 2024. The Applicants participated and were represented by Ms Barr, Letting Agent. The Respondents both participated and represented themselves.

The Tribunal detailed the procedure to be followed and then proceeded to hear evidence from the Parties.

The Tribunal heard from both Applicants and both Respondents. The Applicants and Respondents were questioned by the Tribunal and afforded the opportunity to question the other Party.

Both parties were afforded the opportunity to make submissions at the conclusion of the hearing.

Evidence

Mr and Mrs Callaghan

Mr and Mrs Callaghan gave evidence to the effect that they had let the Property to the Respondents prior to 28 May 2019 but had not signed a lease. A lease was signed by Ms O'Neil on 28 May 2019 which provided for rent at the rate of £400 pcm.

They had produced a handwritten rent statement showing the dates and amounts of rent due, dates and amounts of rent paid and a running total of arrears from 28 May 2019 until the date of termination of the tenancy on 28 September 2023. The amount outstanding was £5,501.26.

They denied having ever received any cash payments from the Respondents.

Ms O'Neill and Mr Dickson

Ms O'Neill gave evidence on behalf of the Respondents. Mr Dickson was afforded the opportunity to give evidence but did not add anything.

The Respondents' position was that the Applicants were "family". As such the Property had been rented on an informal basis until a tenancy agreement was put in place at the Respondents' insistence on 28 May 2019. Ms O'Neill accepted that she had signed the lease that had been produced but that Mr Dickson had not and he was not a Party to it.

The rent was agreed to be £400 pcm however during the pandemic it had been agreed with Mrs Callaghan that they would pay what they could. There had been no mention of arrears.

Ms O'Neill further stated that at least 7 cash payments had been made directly to Mrs Callaghan at the Property. Ms O'Neill had not considered the rent statement

produced and did not have any receipts for payment she alleged had been made. She was unable to confirm the amounts claimed paid.

The Respondents did not agree the amount claimed due in the rent statement produced by the Applicants. The Applicants had not produced bank statements or receipts in respect of payments made.

The Respondents had provided the lease to the local authority to enable the housing element of Universal Credit to be paid in respect of the £400 pcm rent. Payments were made from Universal Credit to the Applicants on the basis of Mr Dickson's earnings which had varied as he had been on "zero hours" contracts. When payments of Universal Credit, including a rental element, had been received Ms O'Neill stated that she passed these on to the Applicants, normally on or around the 9th of the month.

The Respondents had obtained advice from CAB when the Applicants had attempted to increase the rent in 2021. CAB advised the Respondents that the increases were not valid and they had agreed to continue to pay rent at £400 pcm. This was accepted by the Applicants and confirmed by the statement of rent arrears.

Observations on the Evidence

There was a clear factual dispute with regard to the monthly amount of rent due and payments made between the Parties.

Ms O'Neill stated that she had agreed to pay "what they could" with Mrs Callaghan and as such no arrears were due as they had not been insisted upon until near the end of the tenancy.

Ms O'Neill stated that 7 cash payment had been made to Mrs Callaghan in the Property. She could not recall the amounts or the dates on which cash payments were made and did not have receipts.

Both Mr and Mrs Callaghan denied having ever received any cash payments or having ever visited the Property to accept cash payments.

Text exchanges between Mrs Callaghan and Ms O'Neill were produced by the Applicants. These text exchanges took place from January 2023 to April 2023 and clearly show Mrs Callaghan pursuing payment of arrears.

The Applicants produced a number of letters to the Respondents in June 2023 pursuing rental arrears and enclosing rent statements along with their original application.

The evidence of the Applicants was consistent with the documentation produced and relied upon by them both.

The evidence of the Respondents was not vouched and inconsistent. No receipts were produced for cash payments, it was unclear how many payments and how much as being claimed was paid.

The fact that the Respondents had applied for and obtained payment of the housing element of universal credit on the basis of a monthly rent of £400 pcm was inconsistent with their position that they would pay “what they could”.

Universal Credit payments were made on the basis of Mr Dickson’s income which was inconsistent with the position advanced by Ms O’Neill that Mr Dickson had not signed the lease and was therefore not a Party to it.

Given the inconsistencies in their evidence and the lack of any documentary evidence in support the Tribunal preferred and accepted the evidence of the Applicants.

Findings in Fact

The Tribunal then considered the documentary evidence it had received and the submissions made. In so far as material the Tribunal made the following findings in fact:

1. The Parties let the subjects under a PRTA commencing 28 May 2019 until its termination on 28 September 2023;
2. The monthly rent was £400;
3. Ms O’Neill signed the PRTA on 28 May 2019;
4. No cash payments were made by the Respondents to the Applicants;
5. The housing element of Universal Credit was applied for and paid on the Respondents’ behalf on the basis of the monthly rent being £400 and on the basis of Mr Dickson’s income;
6. As at 28 September 2023 the Respondents were in arrears of rent in the sum of £5,501.26 as set out in the rent statement produced.

Decision and Reasons

The Tribunal was satisfied that in the circumstances the Applicants were due the outstanding rent from the Respondents and granted the order sought.

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.

A. Strain

17 December 2024

Legal Member/Chair

Date