

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)

Chamber Ref: FTS/HPC/CV/24/3180

Re: Property at 10G Rowans Gate, Paisley, PA2 6RD (“the Property”)

Parties:

Mrs Lesley Smith, 0/1 3 St Georges Terrace, Bridge of Weir, PA11 3BA (“the Applicant”)

Miss Emily Bolger, 10G Rowans Gate, Paisley, PA2 6RD (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Ahsan Khan (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 £690.80 should be made in favour of the Applicant.

Background

1. By application received on 10 July 2024, the Applicant sought a payment order against the Respondent in the sum of £690.80 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 was conjoined with this application. Both applications proceeded together to the Case Management Discussion (“CMD”).
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 5 August 2024.

3. Notification of the application was made to the Respondent by Sheriff Officer on 8 November 2024, together with the date, time and arrangements for a Case Management Discussion ("CMD"). Representations were requested by 28 November 2024. No written representations were lodged by the Respondent prior to the CMD.

Case Management Discussion

1. A Case Management Discussion ("CMD") took place by telephone conference call on 17 December 2024 at 10am, attended by Mr Ian Troy of Penny Lane Homes, the Applicant's letting agent who was representing her. 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, Mr Troy confirmed that the payment order sought was in respect of rent arrears owing by the Respondent. The tenancy had been running since 2012 and the Applicant purchased the Property from the original landlord, Pip Zero, in 2022, with the Respondent as sitting tenant. There had historically been rent arrears on the account for a number of years. The rent has been £425 per month throughout the tenancy and the Respondent's rent was paid by way of Housing Benefit. However, there was a shortfall between the Housing Benefit received and the monthly rent, so the Respondent was due to pay a top-up amount every month. She used to pay this regularly by payments of around £30 every few weeks but the top-up payments stopped around July 2023 which led to the arrears increasing gradually. When the application was lodged, the rent arrears amounted to £690.80. Reference was made to the updated rent statement lodged on behalf of the Applicant on 10 December 2024 and it was noted that the arrears now amount to £1,031.60. The Legal Member explained that an application to increase the amount claimed has to be received at least 14 days prior to the CMD so that there is sufficient time for this to be notified to the Respondent and an opportunity for them to make representations to the Tribunal. It was noted that the Applicant's agent had deliberately held off putting in the updated rent statement until after the last Housing Benefit payment had been received (£368.20 on 6 December 2024) so that the updated balance was more accurate. However, Mr Troy indicated that the Applicant would be fine with an order just being granted in the original sum of £690.80 in the circumstances.
3. Mr Troy was unsure why the Respondent's Housing Benefit was not paid at a higher rate. It was noted that the Housing Benefit had been £322.20 every month and increased more recently to £368.20. He confirmed that they had sent out the usual 'pre-action requirement' letters to the Respondent concerning the arrears, advice agencies she could contact for assistance, etc. Mr Troy explained that the Respondent is in her 60s and does not communicate by email. Since the outset of the tenancy, their contact details have been those of the Respondent's daughter and they previously had contact with the Respondent's daughter on a fairly regular basis, including after notice was served in the eviction action in April 2024. Initially, the Respondent's daughter

indicated that they were going to try and resolve the arrears issue but they have had no further contact with her since around the summer of 2024. The Respondent lives alone, is unemployed and is in receipt of benefits. They are not aware of any health conditions or other vulnerabilities. They have not really been given any explanation for the Respondent's top-up payments stopping or the rent arrears.

4. The Tribunal Members adjourned briefly to discuss the application and, on re-convening, confirmed that a payment order of £690.80 would be granted. Mr Troy was thanked for his attendance and the information he had been able to provide to the Tribunal.

Findings in Fact

1. The Applicant is the owner and the current landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Short Assured Tenancy which commenced on 14 September 2012.
3. The Applicant purchased the Property around 2022 from the original landlord, with the Respondent as sitting tenant.
4. The monthly rent throughout the tenancy was £425 per calendar month.
5. There was a background of rent arrears dating back several years but the arrears amount remained fairly stable until around July 2023.
6. The Respondent's rent was paid from her Housing Benefit, although there was a shortfall every month which the Respondent regularly paid until around July 2023 when the top-up payments stopped.
7. From July 2023, the rent arrears gradually increased and amounted to £690.80 when this application was lodged.
8. The current level of arrears is £1,031.60.
9. The Applicant has contacted the Respondent regularly via her daughter regarding the rent arrears and 'pre-action protocol' letters have been issued to the Respondent.
10. The Respondent had been called upon to make payment of the amount owing.
11. The Respondent's daughter initially stated that the Respondent would try and resolve the rent arrears issue but there has been no further contact with the Applicant's agent since around the summer of 2024.
12. The Respondent has not submitted any written representations, nor sought time to pay, in respect of this Application.

13. The Respondent did not attend the CMD.

14. The sum of £690.80 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 at the CMD. The Tribunal noted that no representations had been made by the Respondent and that she did not attend the CMD, having been properly and timeously notified of same by way of Sheriff Officer. The Tribunal was satisfied that the application was in order.
2. The Tribunal considered that there was nothing to contradict the information on behalf of the Applicant and therefore no requirement to continue the application to an Evidential Hearing. They had regard to the terms of the tenancy agreement regarding the monthly rent due and to the updated Rent Statement lodged on behalf of the Applicant showing the current level of arrears which exceed £1,000. The Tribunal was satisfied that the Respondent was in arrears with her rent, owed the sum of £690.80 when this application was lodged, has not made any further payments towards rent herself for some time and has not put forward any payment proposals. The Tribunal was satisfied that, in the circumstances, the sum of £690.80 was owing by the Respondent and that a payment order in terms of original application could properly be made at the CMD.
3. Although the Tribunal was satisfied that a higher sum of rent arrears was now owing, in terms of Rule 14A of the Regulations, the Applicant's agent had not lodged the updated rent statement or an application to increase the sum claimed at least 14 days prior to the CMD and accordingly, the Tribunal considered it appropriate to grant an order restricted to the original sum 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.

Nicola Weir

Legal Member/Chair

17 December 2024

Date