

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 Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/23/2580

Re: Property at 24 Annfield Glen Road, Ayr, KA7 3RP (“the Property”)

Parties:

Mrs Angela McFadzean, 20 Goodwin Drive, Annbank, Ayr, KA6 5ET (“the Applicant”)

Miss Naima Watt, formerly at 24 Annfield Glen Road, Ayr, KA7 3RP, present whereabouts unknown (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an order against the Respondent for payment to the Applicant the sum of Three Thousand Eight Hundred and Eighty Five Pounds (£3,885)

Introduction

This is an application under rule 111 and section 71 of the Private Housing (Tenancies) (Scotland) Act 2016. The Applicant seeks to recover arrears of rent.

Case Management Discussions (CMDs) took place on 15 March 2024 and 4 July 2024. An eviction application had been running in parallel with this application but was withdrawn after the let property was destroyed due to fire on or about 9 July 2024.

The applicant has represented herself in these proceedings. The respondent was represented by Mr David Anderson of Ayr Housing Aid Centre but he withdrew from acting at today’s hearing due to lack of instructions. The Respondent failed to attend

the hearing. She was aware of it. Despite historical medical evidence being provided there was no up to date medical evidence issued by a medical practitioner certifying on soul and conscience that she was not fit to attend. Her representative could not explain her absence before he withdrew from acting.

The respondent had raised a potential defence to the recovery of rent on the basis of the state of repair of the property. Despite her having been given fair opportunities to specify her claim in this regard she has repeatedly failed to do so over several months.

This was an evidential hearing. The application was made to the tribunal in August 2023, now 15 months ago. The tribunal applied the overriding objective contained within the procedure rules. It was not in the interests of justice to further delay determination of the application.

Findings and Reasons

The tribunal found the applicant to be a credible and reliable witness and attached weight to her unchallenged written and oral evidence.

The property is 24 Annfield Glen Road, Ayr, KA7 3RP. The applicant is Mrs Angela McFadzean who is the former landlord. The respondent is Naima Watt who is the former tenant.

The parties entered into a private residential tenancy which commenced on 5 August 2022. The agreed rent in terms of the written lease was £600 per month. The current lease between the parties commenced on 5 August 2022 though the respondent tenant has lived in the property since 4 August 2019 in terms of a previous tenancy.

The respondent ceased making payments of rent in April 2023. The applicant identified that the Department of Work & Pensions (DWP) had been paying contributions of rent to the respondent directly which ought to have been paid over to the applicant. The applicant arranged with the DWP to have these payments of rent paid directly to her. These were in the sum of £425 per month from October 2023 and rose to £475 per month from May 2024. There was accordingly a shortfall of rent even after these payments were made directly to the applicant.

The application is supported by a detailed account statement disclosing the sums of rent and other charges which fell due and the monies received. The tribunal found this documentary evidence credible and reliable and attached weight to it. A timeous amendment application was made to increase the sum sought. The total of rent arrears was £3,885 when the respondent left the property in July 2024.

The applicant is entitled to recover arrears of rent under and in terms of the lease. The respondent has not actively opposed the application and has made no time to pay application. A payment order is therefore necessary. The respondent's claims regarding repair issues at the property are incredible and the tribunal rejected that any such issues existed or would warrant the retention of any rent. The Respondent has

failed to specify the nature of said repair issues, failed to specify in what way they impaired her enjoyment of the property, failed to specify when said repair issues were reported to the applicant and failed to retain the withheld rent in a separate account.

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.

Richard Mill

28 November 2024

Legal Member/Chair

Date