



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules) in relation to an application for civil proceedings relative to a Private Residential Tenancy under Rule 111 of the Procedure Rules.

Chamber Ref: FTS/HPC/CV/24/1298

Re: 5/10 Powderhall Rigg, Edinburgh, EH7 4GA ('the Property')

Parties:

Martin Waite and Gayle Waite residing at 11 Burnhead Road, Glasgow, G43 2SK ('the Applicant')

Direct Lettings, 5-6 Melville Place, Edinburgh, EH3 7PR (The Applicant's Representative')

Micheli Corona, 19G Millhill, Musselburgh, EH21 7RH ('the Respondent')

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal')

Tribunal Member: Jacqui Taylor (Legal Member)

Background

1. The Applicants submitted an application to the Tribunal for payment of arrears of rent in the sum of £ 3461.

2. Documents lodged with the Tribunal.

Documents lodged with the Tribunal by the Applicants were:

2.1 A copy of the Private Residential Tenancy Agreement dated 27th November 2020.

2.2 Rent Statement for the period 1st September 2023 to 8th March 2024 showing the outstanding rent to amount to £3461

3. By Notice of Acceptance by Alan Strain, Convener of the Tribunal, dated 12th April 2024 he intimated that he had decided to refer the application (which application paperwork comprises documents received on 15th March 2024) to a Tribunal.

4. The First Case Management Discussion.

4.1 This case called for a conference call Case management Discussion (CMD) at 11.30 am on 14th August 2024.

Mrs Dawn McDermott, property manager with Direct Lettings, the Applicants' Representative, attended the CMD.

The Respondent also attended the CMD.

4.2. The parties agreed the following facts:

4.2.1 The Applicants are Landlords of the Property.

4.2.2 The Respondent was Tenant of the Property in terms of the lease between the parties.

4.2.3 The lease was a Private Residential Tenancy in terms of the Private Housing Tenancies (Scotland) Act 2016 ('The 2016 Act').

4.2.4 The Tenancy commenced on 28th November 2020.

4.2.5 The Tenancy ended on 21st May 2024.

4.3 Oral Submissions by Mrs McDermott.

Mrs McDermott explained that she had sent the Tribunal an updated rent statement on 9th August 2024 which showed the outstanding rent to be £5562.11. The Tribunal clerk checked the Case Management system but could find no record of the Tribunal having received the updated rent statement. Mrs McDermott acknowledged that she had not specifically asked the Tribunal to amend the sum sought. She also confirmed that the deposit has been returned to the Applicants of which £750 was in respect of the rent arrears but acknowledged that this was not reflected in the updated rent statement that she had sent to the Tribunal. In respect of the Tenants offer to repay the rent arrears at the rate of £200 per month she advised that her clients did not wish to accept that offer as they thought it would take the Respondent too long to repay the arrears.

4.4 Oral Submissions by Ms Corona.

Mrs Corona accepted that she owes rent to the Applicants. She had not completed the Time to Pay Application as she knew that she owes the Applicants more than the sum of £3461 detailed in the application. She had paid a deposit at the start of the lease

but had not received details of how the deposit had been allocated to rent arrears and other matters at the end of the tenancy. She had offered to pay £200 per month towards the arrears and had started to make these payments.

4.5 Outcome of the First Case Management Discussion.

The First Case Management Discussion was adjourned to a further date to allow time for the parties to submit the following documents to the Tribunal:

4.5.1 The Applicants' Representative was to provide:

- An application to amend the application to the correct the sum sought.
- A copy of the documentation evidencing the increase in rent from £1200 per month to £1287 per month.
- An updated rent statement to the end date of the tenancy.
- A copy of the documentation with details of the deposit returned to the Applicants.

4.5.2 If the Respondent agreed with the amended sum sought by the Applicants she was to send the Tribunal a Time to Pay Application at least seven days in advance of the next Case Management Discussion.

5.The Second Case Management Discussion.

5.1 This case called for a conference call Case management Discussion (CMD) at 14.00 on 13th December 2024.

Mrs Dawn McDermott, property manager with Direct Lettings, the Applicants' Representative, attended the CMD.

The Respondent did not attend and was not represented. The Tribunal clerk unsuccessfully tried to contact the Respondent by telephone. The Respondent had been sent a letter advising her of the CMD on 12th November 2024. The Tribunal were satisfied that the requirements of Procedure Rule 29 had been met and proceeded with the CMD.

5.2 Mrs Taylor confirmed that the Tribunal had received the updated rent statement on 11th December 2024 but it had not been lodged timeously in terms of the Tribunal Rules. Procedure Rule 22 requires documents to be lodged at least 7 days prior to a CMD. Mrs McDermott acknowledged that she had not specifically asked the Tribunal to amend the sum sought. She asked for the CMD to be adjourned to allow her time to amend the application and timeously send the Tribunal the updated rent statement.

5.3 Outcome of the Second Case Management Discussion.

Mrs Taylor considered the over riding objective to avoid delay but recognised that, on balance, less Tribunal time would be taken up by adjourning the CMD to allow the Applicants' Representative time to amend the application. If the CMD was not adjourned the Applicants' Representative would have to lodge a separate application for the outstanding balance. The Second Case Management Discussion was adjourned to a further date.

6. Amended Application.

The Appellant's Representative sent the Tribunal administration an email dated 20th January 2025 seeking to amend the application to increase the sum claimed to £4110.72.

7. Productions.

7.1 On 11th December 2024 the Applicants' Representative sent the Tribunal an updated rent statement showing the outstanding sum due to amount £4110.72.

7.2 On 20th January 2025 the Applicants' Representative sent the Tribunal the following documents:

7.2.1 Rent Statement dated 11th December 2024 showing the balance of the outstanding rent to amount to £4110.72.

7.2.2 Copy of rent increase notices dated 26th October 2022 and 1st April 2023.

7.2.3 Copies of further emails.

8. The Third Case Management Discussion.

8.1 This case called for a conference call Case management Discussion (CMD) at 14.00 on 3rd February 2005.

Mrs Dawn McDermott, property manager with Direct Lettings, the Applicants' Representative, attended the CMD.

The Respondent did not attend and was not represented. The Respondent had been sent a letter advising her of the CMD on 17th January 2025. The Tribunal were satisfied

that the requirements of Procedure Rule 29 had been met and proceeded with the CMD.

Mrs McDermott asked the Tribunal to grant a payment order in the sum of £4110.72. She confirmed that the deposit of £1250 had been paid to the Applicant's by Safe Deposit Scotland in respect of the rent arrears.

9. The Tribunal made the following findings in fact:

9.1 The Respondent was Tenant of the Property in terms of the lease between the parties.

9.2. The lease was a Private Residential Tenancy in terms of the Private Housing Tenancies (Scotland) Act 2016 ('The 2016 Act').

9.3. The Applicants are Landlords of the Property and heritable proprietors of the Property.

9.4 The title of the Property is Land Certificate title number MID5512.

9.5 The Tenancy commenced on 28th November 2020.

9.6 The Tenancy ended on 21st May 2024.

9.7 The rent due in terms of the tenancy agreement was £1200 per month, payable monthly in advance.

9.8 The rent increased to £ 1250 on 28th January 2022.

9.9 The rent increased to £1287 on 28th July 2023.

9.10 A deposit of £1250 was paid by the Respondent at the start of the tenancy.

9.11 The deposit of £1250 was paid to the landlord by Safe Deposit Scotland, after the end of the tenancy, due to the amount of the rent arrears.

9.12 The outstanding rent due by the Respondent was £4110.72.

10 Decision.

The Tribunal accepted the Applicants' application to amend the original application. They determined that the Respondent was due outstanding rent to the Applicants in the sum of £4110.72 and accordingly they issued an Order for Payment in this sum.

11. 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.

Jacqui Taylor

..... **Legal Member**

3rd February 2025