

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 (“2016 Act”)

Chamber Ref: FTS/HPC/CV/24/0739

**Re: G/1 Block A, Eagle Avenue, Newton Mearns, Glasgow, G77 6ZR
 (“the Property”)**

Parties:

Nevis Properties Limited, a company incorporated under the Companies Acts with company number SC535937 and having its registered office address at 6th Floor, Gordon Chambers, 90 Mitchell Street, Glasgow, Scotland, G1 3NQ (“the Applicant”), being heritable successor to Rothesay Life PLC, and with Rothesay Life PLC itself having been heritable successor to PACE Trustees Limited

Mr Junaid Khalid, G/1 Block A, Eagle Avenue, Newton Mearns, Glasgow, G77 6ZR (“the Respondent”)

Tribunal Members:

Pamela Woodman (Legal Member) and Elaine Munroe (Ordinary Member)

Present:

The case management discussion took place at 10am on Thursday 16 January 2025 by teleconference call (“**the CMD**”). The Applicant was represented by Nicola Brechany of TC Young, solicitors, at the CMD. The Respondent was neither present nor represented at the CMD. The clerk to the Tribunal was Kimberley Jamieson. This case was conjoined with the case with reference FTS/HPC/EV/24/0738.

DECISION (in the absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment in the sum of £8,012.61 be granted.

BACKGROUND

1. An application had been made to the Tribunal under section 71(1) of the 2016 Act and in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended. More specifically, the application was made in terms of rule 111 (*Application for civil proceedings in relation to a private residential tenancy*) of the HPC Rules.
2. The order sought from the Tribunal was a payment order against the Respondent.
3. The application form dated 14 February 2024 was accompanied by copies of various documents, including:
 - a. the private residential tenancy agreement between Pace Trustees Limited and the Respondent dated 7 January 2022 (“**Tenancy Agreement**”).
 - b. a rent increase notice dated 30 March 2022 proposing a new rent of £630.53 from 3 July 2022;
 - c. a rental statement covering the period from 10 January 2022 to 9 February 2024, which stated that there were arrears of £9,320.20 as at 10 January 2024.
4. A notice of acceptance of the application was issued dated 22 April 2024 under rule 9 of the HPC Rules, confirming that the application paperwork had been received between 14 February 2024 and 16 April 2024.
5. A case management discussion was originally scheduled for 23 August 2024. This was notified to both parties by letter. The Tribunal was provided with a certificate of execution which stated that the paperwork from the Tribunal’s administration team had been served by sheriff officers on the Respondent on 24 July 2024.
6. By e-mail dated 5 August 2024, the Applicant’s representatives applied to “request that the application be amended in relation to the sum claimed from £9,320.20 to £13,179.02 in terms of Rule 14A of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.” The Tribunal was informed that this request had also been sent to the Respondent.
7. By e-mail dated 6 August 2024, the Respondent requested a postponement of the case management discussion scheduled for 23 August 2024. The Applicant’s representatives objected to a postponement on 12 August 2024. However, the Tribunal agreed to a postponement.
8. By letter dated 3 December 2024 (sent to both the Applicant’s representatives and the Respondent by e-mail), the parties were informed of the date and time of the CMD.

9. By e-mail dated 24 December 2024, the Applicant's representatives made the following requests:

"We refer to the above and request that the application be amended in relation to the sum claimed from £9,320.20 to £13,781.39 in terms of Rule 14A of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

We also request to amend the application in terms of Rule 14 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. We are seeking to amend the Applicant's name from "Rothesay Life PLC" to "Nevis Properties Limited" following sale of the subject on 5 December 2024 and assignation of Rothesay Life PLC's interests in the proceedings to Nevis Properties Limited."

This attached an assignation dated 5 December 2024 of Rothesay Life PLC's right, title and interest in and to the proceedings (in the current case against the Respondent) in favour of Nevis Properties Limited, and notification to the Respondent dated 12 December 2024 of the change in property ownership and payment details, which (among other things) purported to change the date of payment of the rent from the 10th of each month to the 1st of each month.

A copy of a letter dated 19 December 2024 from TC Young, solicitors, addressed to the Respondent at the Property was provided to the Tribunal, in which the request to increase the amount claimed to £13,781.39 was notified to the Respondent and that an amendment was being sought to change the Applicant's name from Rothesay Life PLC to Nevis Properties Limited.

10. The e-mail dated 24 December 2024 with attachments from the Applicant's representatives were sent by the Tribunal's administration team to the Tribunal and to the Respondent on 6 January 2025.
11. By e-mail dated 6 January 2025, the Applicant's representatives provided a copy of the letter dated 23 December 2024 of intimation of the assignation of Rothesay Life PLC's whole right, title and interest in these proceedings to the Applicant (i.e. Nevis Properties Limited).
12. On the morning of the CMD, the Applicant's representatives sought to lodge correspondence from them to the Respondent with an attached rent statement, sent in August 2024.
13. The Respondent had not provided written representations in advance of the CMD and did not attend the CMD.
14. This decision arises out of the CMD.

PROCEEDINGS, NAMELY THE CMD

15. The Tribunal agreed that the identity of the Applicant could be changed to Nevis Properties Limited.

16. Ms Bechany confirmed that there had been some difficulty in getting detailed information about the rent position and the paperwork relating to the increases in rent to £630.53 in July 2022 (beyond the copy notice issued on behalf of the then landlord) and, apparently, to £649.44 in April 2024, and that the former owners' letting agents had been slow in providing what she had requested from them (which information had not yet been received). It was noted that there were discrepancies in the amounts stated for certain dates in terms of various rent statements provided in the case papers.
17. The Tribunal noted that the rental statement which accompanied the notice to leave dated 15 November 2023 addressed to the Respondent at the Property ("**Notice to Leave**") covered the period from 7 January 2022 to 11 October 2023 and stated that there were arrears of £8,012.61 as at 11 October 2023.
18. The Tribunal also noted that the rental statement which accompanied the letter from the Applicant's representatives to the Respondent dated 19 December 2024 stated that there were arrears of £9,923.67 as at 11 October 2023 but then, unfortunately and likely confusingly for the Respondent, narrated payments made in 2022 and earlier in 2023 but not in date order in the rental statement.
19. The Tribunal further noted that the rental statement which had been provided on the morning of the CMD and accompanied the letter dated 27 August 2024, stated that the arrears of rent as at 11 October 2023 were £7,428.61.
20. Ms Brechany (after taking the Applicant's instructions) confirmed that an order for payment of £8,012.61 was requested to be granted at the CMD, rather than the case being postponed to a further case management discussion (following provision of further detailed and accurate rental statement information and rent increase information).

FINDING IN FACT

21. The Tenancy Agreement stated that:
- a. The start date of the tenancy was 10 January 2022;
 - b. Rent was payable in advance at a rate of £588.50 per calendar month; and
 - c. Payments of rent were due to be paid on or before the 10th of the month.
22. Rothesay Life PLC became registered proprietor of the Property on 24 November 2023. The Tribunal was satisfied, on the balance of probabilities, that all rights of Pace Trustees Limited to recover any arrears of rent owed by the Respondent in respect of the Property and which existed as at 24 November 2023 were assigned to Rothesay Life PLC by virtue of an assignment of arrears dated 12 April 2024.
23. Similarly, the Tribunal was satisfied, on the balance of probabilities, that all rights of Rothesay Life PLC in respect of these proceedings had been assigned to Nevis Properties Limited by virtue of an assignment dated 5 December 2024.

24. Accordingly, the correct entity to be the applicant for the purposes of the CMD was the Applicant (i.e. Nevis Properties Limited).

25. The Tribunal was not satisfied that the information provided in relation to the amounts of rent charged and paid, and the balance at various dates, were accurate.

26. It was noted that there were discrepancies in the amounts stated for certain dates in terms of various rent statements provided in the case papers. Notwithstanding this, the Tribunal was satisfied, on the balance of probabilities, that the Respondent had been given notice that there were arrears of £8,012.61 (or more), that being the amount referenced in the notice to leave, and that there were arrears (as at the date of the CMD) of some amount greater than £8,012.61, but that the exact amount of the arrears was not accurately evidenced.

REASON FOR DECISION

27. The Tribunal was satisfied, on the balance of probabilities, that the Respondent was in arrears of rent in respect of an amount of no less than £8,012.61 as at the date of the CMD.

DECISION

28. The Tribunal granted an order for payment of £8,012.61 against the Respondent.

29. Nothing in this decision will prevent the Applicant from submitting a new application seeking recovery of any other arrears of rent (in excess of £8,012.61) but any such application (if made) should be supported by accurate detailed information.

Right of Appeal

In terms of Section 46 of the Tribunals (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.

P. Woodman

16 January 2025

Chair

Date