



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/24/1904

Re: 78 Ness Circle, Ellon, AB41 9BR (“the Property”)

Parties:

Mr Barry Cumming, Back Hill of Airdlin Croft, Ythan Bank, Ellon, AB41 7TR (“the Applicant”)

Miss Isla-Marie Wright, 78 Ness Circle, Ellon, AB41 9BR (“the Respondent”)

Tribunal Members:

Pamela Woodman (Legal Member) and Gordon Laurie (Ordinary Member)

Present:

The case management discussion took place at 10am on Thursday 13 February 2025 by teleconference call (“**the CMD**”). The Applicant was present and was represented by Ms Juliet Livingstone of Northwood (Aberdeen) Ltd. Mrs Pippa Cumming was also present. The Respondent was present and was supported/accompanied by Ms Sue Wilson (who was described as being the Respondent’s social worker) and Mrs Mandy Edwards (who was described as being the Respondent’s support worker). The clerk to the Tribunal was Leah Graham. This case was conjoined with the case with reference FTS/HPC/EV/24/1905.

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of £3,928.13 be granted against the Respondent.

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 an order for payment of £3,928.13.
3. The application form was dated 26 April 2024 and copies of various documents were provided, including:
 - a. the private residential tenancy agreement between the Applicant and the Respondent dated 7 February 2024 (“**Tenancy Agreement**”).
 - b. rental statement dated 26 April 2024, which stated that there were arrears of rent of £3,928.13 as at 7 April 2024 (“**Rent Statement**”).
4. Submissions from the Applicant and his wife, as well as from the Applicant’s representatives, were received, along with copies of numerous e-mails among the Applicant’s representatives, Mrs Edwards, Ms Wilson and an Aberdeenshire Council housing officer.
5. A notice of acceptance of the application was issued dated 17 July 2024 under rule 9 of the HPC Rules, confirming that the application paperwork had been received between 26 April and 18 June 2024.
6. The Respondent was sent notice of the CMD by letter dated 31 December 2024, which was confirmed (in the certificate of intimation from Walker Love, sheriff officers) as having been served on the Respondent by posting through the letterbox of the Property on 3 January 2025.
7. The Respondent had not provided written representations in advance of the CMD.
8. The Applicant’s representatives had sought to lodge an updated rent account covering the period from 7 March 2020 to 7 January 2025, which showed rent arrears of £4,388.13 as at 7 February 2025 (“**Updated Rent Statement**”). This was sent to the Tribunal’s administration team on 4 February 2024, seeking to amend the amount claimed.
9. This decision arises out of the CMD.

PROCEEDINGS, NAMELY THE CMD

10. The Tribunal did not permit the lodging of the Updated Rent Statement on the basis that any request to amend the sum claimed (in terms of rule 14A of the HPC Rules) would have required to be submitted more than 14 days prior to the CMD (and it was not).
11. The Respondent confirmed that she opposed the application for a payment order, on the basis that there had been issues with the Property, including with the toilet in the Property (that she stated that she had reported on around 8 occasions to the

Applicant's representatives) and a mouse infestation in the Property (which she had reported just before Christmas 2024).

12. The Respondent confirmed that she believed that the money received in her bank account from the Department for Work and Pensions ("DWP") was hers net of housing benefits and that she thought the benefits in relation to the Property were always being sent directly to the Applicant (but now understood that they had not been so sent at certain times).
13. The Respondent accepted that there were rent arrears and that there were more than £2,130 of rent arrears (i.e. more than three months' rent). Otherwise, she noted that she had not checked the Rent Statement and so did not know if it was accurate.
14. Ms Livingstone was asked to explain the gap between the date of entry set out in the Tenancy Agreement (namely 7 June 2019) and the date of signing of the Tenancy Agreement (namely 7 February 2024) and the discrepancy between the rent narrated in the Original Rent Statement before 7 October 2022 as being £695 and the rent narrated in the Tenancy Agreement as being £710.
15. Ms Livingstone explained that the Respondent had originally been a joint tenant of the Property (from 2019 with a Mr Sinclair) and that the Tenancy Agreement was entered into (at the Respondent's request, which the Respondent confirmed to be true) in order to remove the joint tenant (who was understood to have ceased to occupy the Property at some time before October 2023) but otherwise to reflect the continuation of a tenancy of the Property by the Respondent since 2019. The Tenancy Agreement was also updated to reflect the rent then payable as well.
16. Ms Livingstone agreed that joint tenants were jointly and severally liable under the original tenancy but confirmed that the Applicant was not pursuing the former joint tenant for arrears. It was understood that this was because the former joint tenant had continued to pay half of the rent until the removal date in terms of an earlier notice to leave dated 4 October 2023, even though he had ceased to occupy the Property at some time before that.
17. Ms Livingstone and the Respondent agreed that there had been 5 or 6 reports from the Respondent to Ms Livingstone in relation to an issue with the toilet and that Drain Surgeon had been sent out to the Property on multiple occasions, such reports being actioned each time they were made with escalating levels of investigations, until the toilet was taken off and diagnostic work was undertaken, which identified a toothpaste tube stuck down the toilet. The Respondent indicated that there was still an issue with the toilet and that it was backing up, which she stated that she had reported to Ms Livingstone before Christmas 2024. Ms Livingstone stated that she did not recall any such report and that, as she had done on receipt of all previous reports, she would have reported this to the Applicant and had Drain Surgeon sent out again. On this basis, she did not consider that such a report had been made.

18. Ms Livingstone noted that Respondent had reported an issue with mice in the Property before Christmas 2024. She stated that she had informed the Respondent that this was a matter for the Respondent to deal with under the Tenancy Agreement and that this provision was typically included because infestations were often caused as a result of lifestyle etc, for example leaving food out. Clause 40 of the Tenancy Agreement was identified as the relevant provision.
19. It was agreed that Ms Livingstone had requested photographs of the mice allegedly at the Property but the Respondent noted that she did not have a phone with a camera. It was suggested that the Respondent might ask her social/support workers for assistance in taking photos. Upon being asked, Mrs Edwards and Ms Wilson both confirmed that they had not seen any evidence of mice in the Property and had not been asked to help to take photographs of any mice. The Respondent clarified that Mrs Edwards and Ms Wilson would only go into the living room or kitchen in the Property but not other rooms or the attic, where she had placed mouse traps.
20. Upon being asked about the terms of clause 40 of the Tenancy Agreement (which was read out during the CMD), the Respondent indicated that she agreed that it said that any infestation was her responsibility.

FINDINGS IN FACT

21. The Tenancy Agreement stated that:
- a. the start date was 7 June 2019;
 - b. rent was payable at a rate of £710 per month, on or before the 7th of the month;
 - c. a rent deposit of £1,000 was to be paid;
 - d. notices to be served under the Tenancy Agreement may be served using the email addresses set out in the Tenancy Agreement.
22. Whilst it might have been preferable for the Tenancy Agreement to reflect a date of entry which more closely took into account when the Respondent became a sole tenant, that had not happened and the Tribunal noted the explanation given with regard to the Respondent's occupation having continued since 2019. The Tribunal noted the Respondent's confirmation that she had requested that the new Tenancy Agreement be entered into.
23. The Tribunal was satisfied, on the balance of probabilities, that there were arrears of rent of £3,928.13 as at 7 April 2024.
24. The Tribunal noted that the Applicant was the registered landlord of the Property.
25. The Tribunal also noted that the Applicant was the registered proprietor of the Property (title number ABZ28298).

26. Whilst not relevant to the question as to whether or not a payment order should be made in favour of the Applicant, the Tribunal was satisfied, on the balance of probabilities, that:

- a. had a further issue been reported with the toilet just before Christmas 2024, Ms Livingstone would have recalled this and dealt with it – this was based on it having been agreed that, on the 5 or 6 prior occasions of reports being made (albeit apparently all stemming from an issue with a toothpaste tube having been dropped down the toilet), steps had been taken to investigate and seek to resolve an issue with the toilet;
- b. clause 40 of the Tenancy Agreement is in the following terms: “The Tenant is responsible for the eradication of vermin and other pests if the infestation occurs after one week of the Date of Entry.” Accordingly, the Tribunal was satisfied, on the balance of probabilities, that (if there was any infestation of mice) it was the Tenant’s responsibility to deal with and eradicate any such infestation.

REASONS FOR DECISION

27. The Tribunal was satisfied, on the balance of probabilities, that the amount of £3,928.13 was due and payable by the Respondent to the Applicant, in respect of the rent payable up to and including 7 April 2024.

28. Nothing in this decision will prevent the Applicant from submitting a new application seeking recovery of any other arrears of rent (in excess of £3,928.13) but any such application (if made) should be supported by accurate detailed information.

DECISION

29. The Tribunal granted an order for payment in the sum of £3,928.13 (three thousand nine hundred and twenty-eight pounds and thirteen pence).

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.

13 February 2025

Date