



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/24/1700

Property at 1 De Walden Terrace, Kilmarnock, KA3 7AY (“the Property”)

Parties:

Mrs Ann Adams or Spence, 9 Holmlands Place, Kilmarnock, KA1 1UT (“the Applicant”)

Ms Moleen Omar, Mr Imran Khan (SBA), 1 De Walden Terrace, Kilmarnock, KA3 7AY; 1 De Walden Terrace, Kilmarnock, KA3 7AY (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Helen Barclay (Ordinary Member)

Decision - in absence of the Respondents

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £23,800 should be granted against the Respondents in favour of the Applicant.

Background

- 1. The Applicant seeks a payment order in relation to unpaid rent. A related application for an eviction order was also submitted. A CMD took place on 19 August 2024. The Applicant was represented by Mr Haswell. The First Respondent was represented by Mr Anderson. The parties did not attend, and the Second Respondent was not represented.**
- 2. Following the CMD, the Tribunal continued the case to a hearing by telephone conference call. This was scheduled for 24 January 2025 at 10am. Prior to the hearing the Applicant submitted an updated rent statement. Thereafter both the Applicant and First Respondent submitted further documents although both were late in terms of the Procedure Rules. The First Respondent’s representative also notified the Tribunal that the First Respondent had advised**

him that she was unable to attend due to health problems. He was unable to provide medical evidence.

3. The hearing took place on 24 January 2025. The Applicant was represented by Mr Haswell. The Applicant and her daughter initially joined the call but then left when the clerk advised that witnesses could not be present until it was time to hear their evidence. Mr Anderson participated. Neither Respondent joined the call.
4. Mr Anderson advised the Tribunal that he had been unable to speak again to the First Respondent, since she notified him that she was unable to attend. She had given him a recent soul and conscience certificate, but it related to jury service and not the hearing. As far as Mr Anderson was aware, the application was still opposed. However, if the hearing was proceeding, he would require to withdraw from acting as he did not have full instructions.
5. The Legal Member advised the parties that the Tribunal had identified a number of issues which required to be addressed before the hearing could proceed.
 - (a) Service of the applications on the Second Respondent. The Tribunal noted that the applications had been deposited at the property by Sheriff Officer in relation to both Respondents. However, the first Respondent had lodged submissions which state that he did not reside there and that he moved out following an assault on her. The submission goes on to state that his whereabouts are unknown. Mr Anderson confirmed that this is what Ms Omar told him. Mr Haswell said that the Applicant and her letting agent were not aware of this and could not confirm whether he is at the property or not.
 - (b) The update rent statement submitted was not accurate. It contained arithmetical errors, and the running and final totals were clearly incorrect.
 - (c) Both parties had lodged documents late. As these were only received two days before the hearing, it could not be established that they were received by Mr Khan before the hearing, even if he was still resident at the property.
 - (d) The Applicant had not provided any evidence of compliance with the Rent Arrears Pre Action Protocol. Mr Haswell said that he is sure that the relevant letters were issued to the parties, but he will require to contact the letting agent to obtain them.
6. The Legal Member advised the parties that the hearing would require to be adjourned, principally due to the issue of service on Mr Khan. However, the other issues also required to be addressed. The Tribunal indicated that the first Respondent's absence was not a reason for the case to be adjourned and should she fail to attend on the next occasion, the hearing would proceed in her absence unless a postponement was granted.
7. Following the hearing, the Tribunal issued a direction to the parties.

8. The parties were notified that a further hearing by telephone conference call would take place on 20 March 2025 at 10am. The Second Respondent was notified by post to the property address, email and by advertisement on the Chamber website. Prior to the hearing the Applicant provided a response to the direction. She lodged an updated rent statement and a series of letters in terms of the rent arrears pre action protocol. Shortly before the start of the hearing the First Respondent's representative submitted a soul and conscience certificate from her GP stating that she was ill and unable to attend. He also submitted email correspondence with the Local Authority indicating that the First Respondent had been offered accommodation which should be available within a week or so.
9. The hearing took place on 20 March 2025. The Applicant participated together with her son and daughter, Mr and Ms Adams. They were represented by Mr Haswell. Mr Anderson participated but the Respondent was not present.

The Hearing

10. The Legal Member advised the Applicant of the late submissions. Mr Anderson advised that he had not been instructed to seek a postponement and did not think this was required. However, although he recently met with the Respondent, her instructions in relation to the applications were not clear and he could not confirm whether they are still opposed or otherwise. However, the Respondent has been offered alternative accommodation by the Council which should be available for occupation within a few days. Mr Anderson said that he had asked the Respondent to provide evidence of rent payments, as stipulated in the direction, but she had not done so, and the information given to him kept changing. In relation to the eviction application, he said that the household still comprises the Respondent and her four children and the Council accommodation offered is for all five of them. Although he had previously indicated that the Second Respondent had previously lived at the property, recent information from the Respondent suggests otherwise. The couple are estranged, and she has confirmed that his whereabouts are still unknown.
11. Ms Adams told the Tribunal that she manages the property for her mother, the Applicant. She said that the sum specified in the updated rent statement is still outstanding and there has been no contact with the Respondent. The property is the Applicant's former family home. When she re-married, she moved to live with her husband and rented the property out. However, her husband is terminally ill, and it is her intention to move back into the property, with Ms Adams. The property is mortgage free, but the Applicant will require to spend a considerable sum re-instating it as a result of damage caused by recent storms and by the Respondent. The Applicant does not own any other properties.

Findings in Fact

12. The Applicant is the owner and landlord of the property.

13. The Respondents are the tenants of the property in terms of a private residential tenancy agreement.
14. The Respondents are due to pay rent at the rate of £1100 per month.
15. The Respondents have been in arrears of rent since December 2022. No payments have been made to the rent account since June 2023.
16. The Respondents currently owe the sum of £23,800 in unpaid rent.

Reasons for Decision

17. From the documents submitted and the information provided at the Hearing, the Tribunal is satisfied that the Respondents currently owe the sum of £23,800. The first Respondent lodged bank transaction records. However, these relate to 2022 and show payments made to the Second Respondent, not the Applicant. Although directed to do so by the Tribunal, the first Respondent failed to provide any evidence of payments made since June 2023 to the rent account. The Applicants told the Tribunal that no payments have been received and that the sum of £23,800 is outstanding. The Tribunal is satisfied that the Applicant is entitled to a payment order for this sum.

Decision

18. The Tribunal determines that payment order should be granted against the Respondents.

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.

J Bonnar

Josephine Bonnar, Legal Member

20 March 2025

