



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)

Chamber Ref: FTS/HPC/CV/24/2867

Re: Property at 49 Restalrig Road, Edinburgh, EH6 8BD (“the Property”)

Parties:

G & L Cortellessa, 3A Jordan Lane, Edinburgh, EH10 4RB (“the Applicant”)

Mr Daniel Maxton, 49 Restalrig Road, Edinburgh, EH6 8BD (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment by the Respondent in the sum of £1,419 should be made in favour of the Applicant.

Background

1. By application received on 24 June 2024, the Applicant sought a payment order against the Respondent in the sum of £1,419 in respect of rent arrears. Supporting documentation was submitted with the application, including a copy of the tenancy agreement and a rent statement.
2. Following initial procedure, the application was subsequently accepted by a Legal Member of the Tribunal acting with delegated powers from the Chamber President who issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations on 17 September 2024.
3. Notification of the application was made to the Respondent by Sheriff Officer on 18 February 2025, together with the date, time and arrangements for a Case

Management Discussion ("CMD"). No written representations were lodged by the Respondent prior to the CMD.

Case Management Discussion

1. A Case Management Discussion ("CMD") took place by telephone conference call on 25 March 2025 at 11.30am, attended by the Applicant, Mrs Linda Cortellessa, who was accompanied by her assistant, Miss Louise Bowie. The commencement of the CMD was delayed for 5 minutes to allow an opportunity for the Respondent to join late but he did not do so.
2. Following introductions and introductory remarks by the Legal Member, Mrs Cortellessa confirmed that the rent arrears owing had now increased to £2,443 and she was seeking an order for that amount. It was explained by the Legal Member that, in terms of the Tribunal Procedure Regulations [Rule 14A] that advance notification of an application to increase the sum claimed must be made by the Applicant in writing at least 14 days prior to the hearing and intimated to the Respondent at the same time, in order that the Respondent has fair notice of the sum sought prior to the hearing. Mrs Cortellessa was given the option of proceeding today in respect of the original sum sought or the CMD being continued to a later date, in order that the increased sum sought could be properly intimated to the Respondent. Mrs Cortellessa opted to proceed today, seeking the original sum of £1,419.
3. With reference to the rent statement lodged, Mrs Cortellessa confirmed that the same pattern of rental payments continues, with monthly sums being paid into the rent account via the Respondent's benefits. However, there is still a shortfall in rent payments every month, which the Respondent does not pay. It was noted that the rent has now increased again to £650 per month and the amount of benefits payments received is currently £480 per month. Mrs Cortellessa confirmed that the Respondent remains in occupation of the Property, although a fresh eviction application is underway. The Respondent has not provided any explanation for the rent arrears or offered any payment arrangement. Mrs Cortellessa does not know if the Respondent is in employment or totally reliant on benefits as he does not communicate with her. She did previously seek to support him and provide advice regarding his benefits situation but this was to no avail. She understands that he had a benefits adviser arranged but then failed to make further contact with the adviser.
4. The Legal Member considered the application and confirmed that a payment order in the sum of £1,419 would be granted. There was brief discussion regarding the procedures to follow and the Legal Member confirmed that the decision would be issued in writing to both parties shortly. Mrs Cortellessa and Miss Bowie were thanked for their attendance.

Findings in Fact

1. The Applicant is the joint owner and the current landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Short Assured Tenancy which commenced on 5 June 2015.
3. The monthly rent at the outset of the tenancy was £450, but this has increased several times during the tenancy and is now £650 per month.
4. There was a background of rent arrears dating back to June 2023, due to a shortfall in payments most months.
5. The Respondent's rent payments are made via his state benefits but there is a monthly shortfall which the Respondent has failed to pay.
6. Rent arrears have accrued steadily and amounted to £1,419 when this application was lodged with the Tribunal in June 2024.
7. Rent arrears have now increased to £2,443, with the current monthly benefits payments amounting to £480.
8. The Applicant has sought to engage with the Respondent regularly regarding his rent arrears and has sought to provide him with advice and support.
9. The Respondent had been called upon to make payment of the amount owing.
10. The Respondent has failed to engage with the Applicant, to make additional payments or to offer payment proposals.
11. The Respondent has not submitted any written representations, nor sought time to pay, in respect of this application.
12. The Respondent did not attend the CMD.
13. The sum of £1,419 is due and resting owing by the Respondent to the Applicant in respect of rent arrears incurred during the tenancy in terms of this application and has not been paid by the Respondent.

Reasons for Decision

1. The Tribunal considered the background papers, including the application and supporting documentation and the oral submissions made by the Applicant at the CMD. The Tribunal noted that no representations had been made by the Respondent and that he did not attend the CMD, having been properly and timeously notified of same by way of Sheriff Officer. The Tribunal was satisfied that the application was in order.

2. The Tribunal considered that there was nothing to contradict the information on behalf of the Applicant and therefore no requirement to continue the application to an Evidential Hearing. The Tribunal had regard to the terms of the tenancy agreement regarding the monthly rent due and to the Rent Statement lodged by the Applicant showing the level of arrears at the time this application was lodged in June 2024 as amounting to £1,419. The Tribunal was satisfied that the Respondent was in arrears with his rent, owing to his ongoing failure to pay the shortfall between the monthly rent and the benefits payments made on his behalf. He has failed to engage with the Applicant regarding the arrears or to take any other steps to resolve the situation. The Respondent had not made any payments to reduce the arrears and the outstanding arrears stated by the Applicant have now, in fact, increased to £2,443. The Tribunal was satisfied that, in the circumstances, the sum of £1,419 was owing by the Respondent and that a payment order in terms of original application could properly be made at the CMD.
3. Although the Tribunal was satisfied that a higher sum of rent arrears was now owing, in terms of Rule 14A of the Regulations, the Applicant had not lodged an updated rent statement or an application to increase the sum claimed at least 14 days prior to the CMD and accordingly, the Tribunal considered it appropriate to grant an order restricted to the original sum sought.

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.

Date: 26 March 2025

Legal Member: Nicola Weir
Nicola Weir