



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)

Chamber Ref: FTS/HPC/CV/24/1261

Re: Property at 11 Claremont Drive, Bridge Of Allan, Stirlingshire, FK9 4EE (“the Property”)

Parties:

Mr Andrew Tierney, Mrs Vanessa Tierney, Almar La Rue De L'Etocquet, St John, Jersey, JE34AE, Jersey; Almar La Rue De L'Etocquet, St John, Jersey, JE34AE, Jersey (“the Applicant”)

Ms Claire Lawrie, 6 Marsden Court, Stirling, FK9 5LU (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member)

Decision

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 £5,446.58 should be made in favour of the Applicant.

Background

1. By application received on 15 March 2024, the Applicant sought an order for payment against the Respondent in the sum of £5,500 in respect of rent arrears. Supporting documentation was lodged with the Tribunal, including a copy of the tenancy agreement and a rent statement. An eviction application was lodged at the same time but subsequently withdrawn by the Applicant who advised that the Respondent had since vacated the Property.
2. On 25 June 2024, following initial procedure, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance in respect of the application in terms of Rule 9 of the Regulations.

Papers were served on the Respondent by Sheriff Officer on 5 September 2024.

3. Written representations were lodged on 5 September 2024 by the Respondent prior to the originally scheduled Case Management Discussion (“CMD”) on 11 October 2024, requesting a postponement of the CMD. The postponement was granted by the Legal Member who was dealing with the case at that time. A second CMD was scheduled for 29 November 2024 and parties were notified. No written representations were lodged by either party prior to the CMD.
4. A CMD took place on 29 November 2024, attended by Ms Linda Paterson of B-spoke Property on behalf of the Applicants and by the Respondent, Ms Claire Lawrie. Ms Paterson requested an amendment of the application at the CMD, advising that rent arrears had risen to £6,946.58 by the time the Respondent had vacated the property on 11 April 2024. There was discussion regarding the application and it was noted that the Respondent disputed the rent arrears, claiming that she had been unlawfully evicted from the Property and that there had been issues with the condition of the Property during her tenancy, including in relation to the boiler. She indicated that she wished an opportunity to seek legal advice in the matter and requested an adjournment of the CMD, which the Applicant’s representative opposed. The Legal Member decided to adjourn the CMD in the circumstances to a further CMD. A CMD Note detailing the discussions was issued to parties following the CMD.
5. A third CMD was scheduled for 3 February 2025, which again was postponed at the request of the Respondent and, again, which had been objected to on behalf of the Applicant.
6. A fourth CMD was scheduled for 2 May 2025. Parties were notified and there were no written representations lodged by either party prior to the CMD.

Case Management Discussion – 2 May 2025

7. The CMD took place by telephone conference call on 2 May 2025 at 10am in front of a different Legal Member. Again, both Ms Paterson on behalf of the Applicant and Ms Lawrie, the Respondent, were in attendance.
8. Following introductions and introductory comments by the Legal Member, parties were asked for any updates which had occurred meantime. Ms Paterson confirmed that she has not had any communication with the Respondent and confirmed that the Applicant was still seeking an order for £6,946.58, being the increased amount of the rent arrears due.
9. Ms Lawrie was asked to confirm whether she had sought legal advice as she had stated was her intention several times in the paperwork lodged with the Tribunal and at the CMD on 29 November 2024. She stated that she had not been able to take legal advice but thought it was better to go ahead today anyway, with the CMD. She stated that she agrees that there are rent arrears

but has queries regarding the amount sought. Reference was made to the updated rent statement which had been lodged with the Tribunal some time ago and she confirmed that she had had sight of that and is aware that it shows the balance of £6,946.58 owing. However, Ms Lawrie raised the issue of the tenancy deposit and what had happened to that. It was noted by the Legal Member that the deposit in terms of the tenancy agreement was £2,750 and that there is no mention of that in the updated rent statement. Ms Paterson confirmed that the whole deposit was paid back to the Applicant by the tenancy deposit scheme to cover damages and clearance costs, etc incurred by the Applicant as a consequence of the condition in which the Property was left on vacation by the Respondent. She confirmed that there was no dispute raised over this with the tenancy deposit scheme at the time by the Respondent. The Applicant's claim for return of the deposit was made on 22 May 2024. She referred to the various communications which had been sent to the Respondent prior to the deposit being released to the Applicant on 5 July 2024, including a copy of the 'check-out' inventory, detailing all the issues.

10. Ms Lawrie's position was that she thinks the Applicant has maximised their claim against the deposit to take it to £2,750. She feels that she was held responsible for things that were not her responsibility, for example in relation to the condition of the garden, outside lighting that she had had to instal for safety reasons and scratches on the floor near the front door. She conceded that she had admitting breaking a light and two other matters to Ms Paterson. She explained that she did accept that the deposit should be put towards rent arrears and that is why she just accepted it. She also mentioned that she had a lot going on at the time. However, having looked at the 'check-out' report, she does not think that £2,750 was a reasonable amount to have been claimed by the Applicant. The Legal Member explained how the tenancy deposit scheme operates and their timescales that apply, if the tenant wishes to raise a dispute, in which case the scheme would adjudicate on the matter prior to releasing the deposit. Ms Lawrie clarified that she was not claiming that the paperwork issued by the scheme had been wrong or misleading, just that she had hoped there was some way of her contesting the issue now.
11. Ms Paterson confirmed that they had followed all the correct processes and procedures with the tenancy deposit scheme. Her position was that there was no dubiety in the documentation issued to the Respondent as to the basis on which the return of the full deposit to the Applicant had been claimed. She said that she thought it was quite telling that the Respondent has still not sought legal advice regarding these matters, given that she first said over a year ago that she intended to do so. Although the Applicant maintains their position that they were entitled to claim the whole deposit back, given the length of time the rent arrears have been outstanding and this process has been ongoing, the Applicant would be willing to forego some of the deposit amount that they received back, to the amount of £1,500, and deduct that sum from the rent arrears claimed, in order to try and reach settlement with the Respondent.
12. Ms Lawrie said that she appreciated that but wished to clarify that she had been the victim of a very serious identity fraud around this time, which caused her extreme stress and meant that she was effectively offline for a period of

two/three months, during which time very few communications were received by her. She confirmed having received the 'check-out' report but does not recall receiving many communications from the tenancy deposit scheme. She said that she would need to check back, although it may be that some of the emails cannot now be recovered. She stressed that she was not disputing this matter but wished to make it clear that she was not ignoring or misunderstanding communications received. Ms Lawrie stated that she would accept this deduction from the rent arrears claimed but wondered, in the circumstances, if there could be a larger deduction negotiated. She stated that this is because she does not accept that she had caused £2,750 of damage but also due to the costs she incurred due to being served with an eviction notice just a few months into the tenancy, on the basis that the Applicant had decided to sell the Property. Ms Lawrie explained that she had incurred hefty costs in moving up from London to the Property and then having to move back out again a few months later. This added to the stress she was already under and she was off work sick for a period. The whole thing caused her a lot of financial damage and there were issues with the boiler and other things too. She did not think the Applicant had treated her fairly.

13. The Legal Member explained that, if Ms Lawrie had wished to contest the eviction or claim unlawful eviction afterwards, on the basis that she did not consider the Applicant genuinely intended to sell or that she was misled into vacating the property, she could have defended the eviction or raised separate proceedings against the Applicant. However, as appears to have also been stated by the previous Legal Member at the CMD in November 2024, these matters are not a defence to an action for recovery of rent arrears. Ms Paterson was, however, asked if she had authority from the Applicant to offer any further deduction from the sum sought from the Respondent. Ms Paterson stated that she did not and that the £1,500 deduction was the maximum to be offered. The Applicant is not admitting that they were not entitled to retain the whole deposit. The £1,500 deduction was simply a goodwill gesture to try and reach a settlement of this longstanding matter today.
14. Ms Lawrie stated that she would accept this and an order being granted against her today in the sum of £5,446.58, being the rent arrears claimed of £6,946.58. less the £1,500 deduction offered by the Applicant. Ms Lawrie stated that she may, however, still pursue separate proceedings of her own.
15. The Legal Member confirmed that an order in the sum of £5,446.58 would accordingly be granted today, that the decision paperwork would follow shortly and the formal Order after the 30-day appeal period has expired. There was some brief discussion regarding enforcement of the Order and the possibility of the parties negotiating a payment plan, but that the Tribunal would not be involved in that process. Parties were thanked for their attendance and the CMD concluded.

Findings in Fact

1. The Applicant was the joint owner and landlord of the Property.

2. The Respondent was the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 27 November 2023.
3. The tenancy ended on 11 April 2024, when the Respondent vacated the Property following the issuing of a Notice to Leave on her.
4. The rent in terms of the tenancy was £2,750 per calendar month.
5. A deposit of £2,750 was paid by the Respondent at the outset of the tenancy and placed in a tenancy deposit scheme by, or on behalf of, the Applicant.
6. The Applicant claimed the full deposit of £2,750 at the end of the tenancy through the tenancy deposit scheme processes to cover the costs of damages, etc to the Property which they claimed were the responsibility of the Respondent.
7. The Respondent did not dispute the return of the deposit to the Applicant through the tenancy deposit scheme processes.
8. The full deposit of £2,750 was released to the Applicant in or around July 2024.
9. Rent arrears had arisen during the tenancy, with no rental payments being made after the sum of £2,750 was paid on 27 December 2023.
10. Arrears amounted to £5,500 when this application was lodged and had risen to £6,946.58 by the time the Respondent vacated the Property on 11 April 2024.
11. The Respondent had been called upon to make payment of the rent arrears, or enter into a payment arrangement but had failed to do so, rendering this application necessary.
12. The Applicant's letting agent had corresponded with the Respondent at length in the latter stages of the tenancy concerning the rent arrears and repair/maintenance issues concerning the Property.
13. The Respondent had previously offered several explanations for the arrears and also considered that she had incurred significant expense through being evicted from the Property early in the tenancy.
14. The Respondent admitted at the CMD that rent arrears were owing and accepted an order being granted against her in the reduced sum of £5,446.58.
15. The sum of £5,446.58 is due and owing by the Respondent to the Applicant in respect of rent arrears incurred during the tenancy.

Reasons for Decision

1. The Legal Member considered all of the background papers, including the application and supporting documentation lodged, the contents of the CMD Note prepared by the previous Legal Member following the previous CMD on 29 November 2024 and the lengthy procedural background to this application. The Legal Member also considered the oral submissions made on behalf of the Applicant by their representative, Ms Paterson and by the Respondent, Ms Lawrie at the CMD on 2 May 2025 and the discussions which had taken place at the CMD.
2. The Tribunal was satisfied from the above that the reduced sum of £5,446.58 proposed on behalf of the Applicant at the CMD in full and final settlement of the rent arrears claimed was due and owing by the Respondent in respect of rent arrears arising from the tenancy. This was accepted by the Respondent at the CMD and the Legal Member was accordingly satisfied that an order for payment in that sum could properly be made at the CMD, there being no necessity for a further CMD or Evidential Hearing on the matter, or any further Tribunal procedure.

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.

Nicola Weir

Legal Member/Chair

Date: 2 May 2025