

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) and Rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules)

Chamber Ref: FTS/HPC/CV/19/2383

Re: Property at 5 Morgan Court, Stirling, FK7 0QX
 (“the Property”)

Parties:

Mr Scott Crawford and Mrs Mhairi Crawford McKee, 44 Claymore Drive, Stirling, FK7 7UP
 (“the Applicants”)

Ms Lynette Glen, 39 Grierson Crescent, Cambusbarron, FK7 9PW
 (“the Respondent”)

Tribunal Members:

Susanne L. M. Tanner Q.C. (Legal Member)
Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondents should pay to the Applicant the sum of ONE THOUSAND NINE HUNDRED AND SIXTY EIGHT POUNDS AND TWO PENCE (£1968.02) STERLING; and made an Order for Payment in respect of the said sum.

STATEMENT OF REASONS

1. Procedural Background

- 1.1. On 29 July 2019 the Applicants made an Application to the tribunal ("the Application") under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules") for civil proceedings in relation to an assured tenancy under the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act").
- 1.2. In the Application the Applicants sought payment from the Respondent of the sum of £1247.69 in respect of rent arrears under the private residential tenancy between the parties, as at 24 July 2019.
- 1.3. The sum sought by the Applicant represents rent arrears as shown on a rental statement for the period from the start of the tenancy on 19 April 2018 to 24 July 2019.
- 1.4. On 12 August 2019, the Application was accepted for determination by a tribunal. Both parties were notified by letters dated 9 September 2019 of the date, time and place of Case Management Discussion ("CMD") in relation to the Application to take place at 1000h on 17 October 2019 at Wallace House, Maxwell Place, Stirling. The Respondent was invited to make written representations in response to the Application by 30 September 2019. Both parties were advised that they were required to attend the CMD. The parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application which may involve making or refusing a payment order. The parties were also advised that if they do not attend the CMD this will not stop a decision or order being made if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair. The Respondent was served with the notification by Sheriff Officers.
- 1.5. On 12 September 2019, the CMD was postponed by the tribunal on the request of the Applicant. A further CMD was fixed for 25 October 2019 at 1000 at Wallace House, Maxwell Place, Stirling.
- 1.6. The Respondent did not submit any representations or make any contact with the tribunal.
- 1.7. A CMD took place on 25 October 2019 at 1000 at Wallace House, Maxwell Place, Stirling. Reference is made to the Notes on the Case Management Discussion which were prepared by the Legal Member chairing the CMD and sent to parties. At the CMD, the Respondent agreed that some rent arrears

were due but there was a dispute as to the amount. The sum of £1254.51 was agreed for the period from 5 July 2019 to 26 August 2019. There was a dispute about the arrears for the period from 19 April 2018 to 4 July 2019. The Applicant claimed that £1170.75 was due and the Respondent disputed this, stating that it was £705.00. The parties were therefore in dispute about the sum of £465.75. The Respondent claimed that she had been given one week free of rent at the start of the tenancy, which was disputed by the Applicant. There was a sum returned to the Applicant by the deposit protection scheme in respect of rent arrears which had not been deducted from the amount claimed by the Applicant. The case was adjourned to a hearing in relation to the amount of rent arrears due. Both parties were asked to lodge a written calculation of what they respectively submit is due and to lodge any additional documents which support their respective positions, including documents relating to the amount paid to the Applicant in respect of rent arrears by the deposit protection scheme.

1.8. A hearing was fixed for 27 January 2020 at 1000h at Wallace House, Maxwell Place, Stirling and both parties were notified.

1.9. On 13 January 2020, the Second Applicant lodged further information in relation to the calculation of the sum she said was due by the Respondent in respect of rent arrears; and documentation from the deposit protection company showing that £74.00 was returned to the Applicant in respect of rent arrears.

1.10. The Respondent did not produce any calculation or further information prior to the date of the hearing.

2. Hearing: 27 January 2020 at 1000h at Wallace House, Maxwell Place, Stirling

2.1. The Second Applicant attended on behalf of both Applicants.

2.2. The Respondent attended with a supporter, Ms Lauren Jarvis.

2.3. The Respondent sought to lodge documents at the hearing and apologised that they were late, stating that she had had issues printing the documents in advance.

2.3.1. R1 – the Respondent's calculation of what she says she owes to the Applicant in respect of rent arrears;

2.3.2. R2 – an offer by the Respondent to the Applicant in July 2019 to pay a sum of money.

2.3.3. R3 – payments made by the Respondent in 2019.

2.3.4. R4 – financial information from the Respondent.

2.4. The tribunal adjourned in order that the tribunal and the Applicant could consider the late documents submitted by the Respondent. The Applicant stated that they were late but had no opposition to late lodging. Having considered the documents the tribunal allowed the documents to be lodged late on the basis that they were directly relevant to the matter in dispute and there was no prejudice to the Applicant occasioned by late lodging.

2.5. Amendment by the Applicant of the sum claimed

2.5.1. The Applicant requested an amendment to the sum claimed to increase it from £1274.69 to **£1968.02**, to include the rent due for the period from 25 July 2019 to the end of the tenancy on 25 August 2019; and to make a deduction for the £74.00 recovered in respect of rent arrears from Safe Deposits Scotland.

2.5.2. There was no opposition from the Respondent to the amendment.

2.5.3. The tribunal allowed the amendment to increase the sum claimed to £1968.02.

2.6. Submissions by the Applicant

2.6.1. The Applicant stated that the private residential tenancy (PRT) start date was 19 April 2018. The first payment stated in the PRT agreement was due on 19 April 2018 for the sum of £187.25 in respect of the period from 19 April 2018 to 4 May 2018. The Applicant stated that she accepted that she had agreed with the Respondent that a reduced sum of £187.25 for that period would cover her mortgage and outgoings to allow the Respondent to take on the property early. The Applicant stated that the calculation she had submitted to the tribunal in January 2020 had the wrong figure (which had been worked out on a pro rata basis rather than by reference to the agreement which was reflected in the PRT) and that the calculation should be amended to show £187.25.

2.6.2. Thereafter payments were due on 4th of the month, from 4 May 2018 to 4 November 2018, in the sum of £749.00 per month. On 20 November 2018, the Applicant agreed that the rent would be reduced to £720.00 with effect from the next rent due date, which was 4 December 2018. It remained at this rate until the end of the tenancy on 25 August 2019.

2.6.3. The Applicant stated that at the CMD there had been a discussion about an extra month's rent for the period from 25 July 2019 to 25 August 2019. She stated that she had commenced eviction proceedings against the

Respondent which were withdrawn and the Respondent left the property on 25 August 2019, which she took to be the end date of the tenancy for the purposes of calculating rent arrears.

2.6.4. The tribunal discussed the Applicant's calculation of rent arrears:

2.6.4.1. £187.25 was said to be due in respect of the period from 19 April 2018 to 4 May 2018;

2.6.4.2. Seven months was due at the original rent of £749.00 per month, totalling £5243.00.

2.6.4.3. Eight months was due at the reduced rent of £720.00 per month, from 4 December 2018 to 4 July 2019, totalling £5760.00.

2.6.4.4. £520.77 is the pro rata figure from 4 August up to 25 August 2019.

2.6.4.5. The total due is £11,711.02 for the period from the start of the tenancy on 19 April 2018 to the end of the tenancy on 25 August 2019.

2.6.5. The Applicant stated that the total amount paid by the Respondent is £9669.00.

2.6.6. The Applicant stated that £74.00 was allocated to rent by Safe Deposits Scotland which had now been deducted from the sum claimed.

2.6.7. The total rent arrears amount to the amended sum claimed of **£1968.02**

2.7. Submissions by the Respondent

2.7.1. The Respondent agreed that:

2.7.1.1. the start date of the tenancy was 19 April 2018 and the end date was 25 August 2019.

2.7.1.2. the sum of £187.25 was due for the period 19 April 2018 to 4 May 2018;

2.7.1.3. Seven months were due at the original rent of £749.00 per month, totalling £5243.00;

2.7.1.4. the rent reduction to £720.00 was agreed in November 2018 and it came into effect from 4 December 2018;

2.7.1.5. Eight months were due at the reduced rent of £720.00 per month from 4 December 2018 to 4 July 2019, totalling £5760.00.

2.7.1.6. £520.77 was due as a pro rata figure from 4 August to 25 August 2019;

2.7.1.7. The total rent due is £11,711.02 for the period from the start of the tenancy on 19 April 2018 to the end of the tenancy on 25 August 2019;

2.7.1.8. The Respondent had paid £9669.00 over the whole tenancy.

2.7.1.9. £74.00 was deducted from the tenancy deposit in respect of rent.

2.7.2. Having gone through the revised calculation, the Respondent therefore agreed that the amended arrears figure of £1968.02 is due to the Applicant and she then admitted the claim.

2.7.3. However, she stated that due to her financial circumstances she cannot afford to pay the full amount to the Applicant.

2.8. Time to Pay Direction

2.8.1. As the Respondent accepted liability for the full amended sum she asked to submit an application for a Time to Pay Direction.

2.8.2. The Respondent was provided by the tribunal Clerk with the relevant Application Form for a Time to Pay Direction and the tribunal adjourned to enable her to complete it.

2.8.3. The Application for a Time to Pay Direction was passed to the Applicant and she was provided with a Response Form, which was completed. She opposed the Time to Pay Direction.

2.8.4. The tribunal heard from both parties in relation to the Application for a Time to Pay Direction, with reference to the Application and Response.

2.8.5. The Respondent is unemployed and she is a single parent with a dependent child under the age of 18. Her monthly net income is £1116.00 and her total net outgoings are £1629.00. She has an ongoing monthly deficit of £513.00. Her outgoings include payments under an arrestment in respect of £256.00 of Council Tax (no schedule was attached to the Application and no request was made to recall or restrict the arrestment). She has debts in addition to rent of £200.00 car finance, £28,000.00 student loan and £400.00 on credit cards. The Applicant offered to pay £10.00 per month to the Applicant in respect of the £1968.02 of rent arrears.

2.8.6. The Applicant opposed the request for time to pay at a rate of £10.00 per month, stating that it would take over 16 years to repay the full amount. She also stated that there are parts of the Respondent's expenditure which could be reduced. She outlined ways in which she has taken action to assist the Respondent to pay the debt.

3. The tribunal makes the following findings-in-fact:

- 3.1. The Applicants are the joint registered Proprietors of the Property.
- 3.2. There was a Private Residential Tenancy between the Second Applicant and the Respondent for the Property.
- 3.3. The start date for the tenancy was 19 April 2018.
- 3.4. The end date for the tenancy was 25 August 2019.
- 3.5. The rent payable for the period from 19 April 2018 to 4 May 2018 was £187.25, which was due on 19 April 2018.
- 3.6. The rent payable from 4 May 2018 until 3 December 2018 was £749.00 per calendar month, payable monthly in advance on or before 4th of each month.
- 3.7. The rent payable from 4 December 2018 until the end of the tenancy on 25 August 2019 was £720.00 per calendar month.
- 3.8. The total rent payable for the period from 18 April 2018 to 25 August 2019 is £11,711.02.
- 3.9. The Respondent has paid £9669.00 by way of rent from 18 April 2018 to 25 August 2019.
- 3.10. The Applicant received £74.00 of the Respondent's deposit from the deposit protection company in respect of rent arrears.
- 3.11. The Respondent owes to the Applicant the sum of £1968.02 in respect of rent arrears for the period from 19 April 2018 to 25 August 2019.

4. Discussion

- 4.1. The tribunal determined on the basis of the Application (including supporting documents) and the oral representations made by the parties, including agreement by the Respondent that the amended sum claimed was due by her to the Applicant, that the Respondent owes to the Applicants the amended sum of £1968.02.
- 4.2. On the basis of its findings in fact, the tribunal determined that an Order for Payment should be made in respect of the amended sum of £1968.02 sought by the Applicants.

4.3. Having heard from both parties in relation to the Application for a Time to Pay Direction and the Applicants' opposition thereto, and considering the Respondent's financial circumstances and the offer of £10.00 per month, the tribunal determined that it would not make a time to pay direction in the circumstances. The Respondent is already in a substantial amount of debt and has an ongoing £513.00 monthly deficit for current net outgoings versus income. She is unemployed and has a dependent child. She has insufficient means to make a monthly payment to the Applicant to repay the admitted arrears in any acceptable period of time. The offer of £10.00 per month is insufficient as it would take in excess of 16 years for the debt to be repaid to the Applicant. The tribunal determined that it would not make a time to pay direction with the payment order.

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.

Susanne Tanner

27 January 2020

Susanne L. M. Tanner Q.C.
Legal Member/Chair