

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision 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

Chamber Ref: FTS/HPC/CV/18/3177

Re: 31 Maybole Crescent, Glasgow G77 5SY (“the property”)

Parties:

Ms Laura Cummings, 39 Garve Avenue, Glasgow G44 3NT
(“the applicant”)

Ms Wendy Ross, Flat 7, 59 Riverside Road, Eaglesham, Glasgow, G76 0DH
(“the respondent”)

Tribunal Members:

Adrian Stalker (Legal Member) and Mary Lyden (Ordinary Member)

Decision:

The Tribunal found that the sum of £850 was due, as rent arrears, by the respondent to the applicant, and made a payment order for that amount.

Background

1. This is an application under rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Procedure Regulations”). The applicant and respondent were respectively the landlord and tenant in a lease of the property, which ended on 18 June 2018. In the application, the applicant seeks payment from the respondent in the sum of £1,550. This sum is said to comprise rent arrears of £1,450, and £100 in respect of costs incurred by the applicant for clearing

rubbish from, and tidying, the garden, after the tenancy ended.

2. On 28 January 2019, a Case Management Discussion (“CMD”) took place. Reference is made to the Note of that CMD (dated 29 January), prepared by Mr Crawford, legal member of the Tribunal. In terms of rule 17, Mr Crawford: identified issues to be resolved and facts agreed between the parties; raised with the parties the issues on which the Tribunal required to be addressed; discussed with the parties the witnesses, documents and other evidence required; and discussed whether or not a hearing was required.

3. Mr Crawford adjourned the CMD for in order for parties to address the matters raised at points 7 to 10 of his note.

4. A further CMD took place at 11:30am on 11 March, at the Tribunals Centre, York Street, Glasgow. The applicant was again not present, but represented by her solicitor, Miss Cargill, of Mellicks, Glasgow. The respondent was again present, and supported by her son, Jamie Ross.

5. As regards points 5(b) and 8 in the Note of the first CMD, the parties confirmed that the tenancy deposit had now been applied to the outstanding rent arrears, reducing the balance sought by the applicant by £600.

6. As regards points 5(c), 9 and 10 in the Note of the last CMD, Ms Cargill produced a letter dated 11 February, from her office to the respondent, confirming that the applicant no longer wishes to pursue the claim of £100 for costs incurred for clearing rubbish from, and tidying, the garden, after the tenancy ended. Ms Ross confirmed that she had read, and understood, that letter.

7. Accordingly, the balance sought by the applicant had been reduced from £1,550 to £850.

8. As regards points 5(a) and 7 in the Note of the first CMD, Ms Ross explained that she had been unable to obtain documentary evidence from her former partner, Mr

Smith, of payment of the rent in December 2017. He was abroad on a world cruise, and due to difficulties in contacting him by email, he had been unable to provide the verification she requires, of the rental payment. Ms Ross advised the Tribunal that Mr Smith believed that he probably made the payment to the applicant's letting agents "online", but may have made the payment in cash.

9. Mr Smith was due to return to the UK on 19 April. Ms Ross confirmed that, if a hearing was fixed after that date, Mr Smith would be able to attend, in order to give evidence. In the meantime, the Tribunal asked Ms Ross to intimate to the applicant's solicitors, in advance of the hearing, any written evidence obtained from Mr Smith on his return, which tended to verify payment of rent by him in December 2017. Alternatively, if she understood from Mr Smith that he made the payment in cash, Ms Ross should intimate to the applicant's solicitors, in advance of the hearing, any information he can provide as to date of the payment, the person to whom the payment was made, etc.

Hearing

10. A hearing took place at 10am on 2 May 2019, at the Tribunals Centre, York Street, Glasgow. The applicant was again not present, but represented by her solicitor, Miss Cargill, of Mellicks, Glasgow. The respondent was again present, although this time alone.

11. The issue outstanding for determination is that identified by the Tribunal member Mr Crawford, at paragraph 5(a) of his note of the CMD of 28 January: "Did the Respondent's former partner [Mr Smith] make a payment of rent to the Applicant, or her letting agents, during December 2017?" The Tribunal understood from the previous CMD notes that, of the £850 now sought by the applicant, only the sum of £600, said to have been paid by Mr Smith, remained in dispute.

12. At the outset of the hearing, Ms Ross indicated that Mr Smith would not be attending to give evidence. Instead, he had written a letter to Mellicks, the applicant's solicitors, dated 1 May 2019, a copy of which had been provided, on that date, to Ms Cargill.

13. The Tribunal read the letter. It contains the following passages, which are relevant to the question of whether Mr Smith paid £600 to the applicant's letting agents, at some point in December 2017:

With reference to the £600 I paid on behalf of Wendy, I am sure I paid it in cash and it was posted in an envelope through the office letter box of Brunswick Letting. The reason for this was because Wendy was late. At no time was Wendy asked about that particular month's payment. If Brunswick say they did not get any rent in December where are their emails, letters or any other written request for payment? Basically I can't prove I paid it, but I did!

...

I would be more than happy to come to an arrangement to bring this sad and sorry episode to an end. To be honest I have more important things to do. I don't really think that your client all things considered is due anything at all apart from your Fee Note. The £250 seems again to be more rubbish plucked from the sky so I am not happy at paying that. I did pay the £600 in cash which was silly of me. I will pay the £600 again if that brings matters to an end.

14. Most of the letter is concerned with other aspects of the tenancy. In particular, it states that the property was regularly in disrepair, and that at certain times, the applicant's agents sought to intimidate the respondent into paying a higher rent.

15. Ms Cargill indicated that she wished lead evidence from a Mr Paul Priestman, a director of the applicant's letting agents, Brunswick Residential ("Brunswick"). At this point, the respondent said that she did not wish to be in the same room as Mr Priestman, given difficulties she had with him, during the tenancy.

16. The Tribunal took a short adjournment to consider the issues raised in the letter, and approach that ought to be taken, in relation to Mr Priestman's evidence. On resumption, the Tribunal advised parties as follows. It was not prepared to consider the issues raised in Mr Smith's letter, except insofar as relating to the total amount of rent which had been paid by the respondent. That was issue to be resolved in relation to this application, which had been identified in the two previous CMDs. The respondent was advised that if she wished to raise any issue as to the condition of the tenancy, or any issue of harassment, by way of a claim for compensation or otherwise, then that would have to be the subject of a separate application by her.

17. The Tribunal also explained that Ms Cargill was entitled to lead Mr Priestman's evidence if she wished to do so. The respondent was free to leave the Tribunal room, while that evidence was being given. However, she would lose the opportunity to hear his evidence at first hand, and question him directly. The respondent insisted that she did not wish to be present while Mr Priestman was giving his evidence.

18. The Tribunal then heard Mr Priestman's evidence, in the respondent's absence.

19. The key points of that evidence were as follows:

- He is Paul Lewis Priestman, aged 50, a Company Director of Brunswick, and works at their only place of business, at 36 Minard Road Glasgow.
- Brunswick managed the tenancy between the parties, on behalf of the applicant.
- The parties' most recent tenancy commenced on 1 August 2013. However, there had been earlier tenancy agreements.
- The respondent left the property, on 18 June 2018, having been served with a notice that sought to end the tenancy on 1 July 2018.
- The rent due under the tenancy was £600 per month.
- The respondent left with rent arrears.
- He was taken to the rent statement, which was attached to the application. The statement shows that the respondent's rent was paid in full, as at the end of September 2017. However, she fell into arrears from 1 October onwards.
- Between the period of 8 months from 1 October 2017 to 31 May 2018, the respondent had, according to Brunswick's records, paid a total of £3,350.
- The total rent due for that period was $8 \times £600 = £4,800$.
- Accordingly, as at 31 May 2018, the arrears due were £1,450.
- The applicant had not charged rent for the month of June 2018.
- No one else made payments into the account, as far as Mr Priestman was aware.
- He knew Douglas Smith as the respondent's ex-partner. Brunswick had some contact with Mr Smith, early on in tenancy. However, he had informed Brunswick, around 4-5 years ago, that he no longer wished to have anything

to do with the tenancy.

- As far as he was aware, Mr Smith never make payment of rent in cash. He may have made payments at the start of the respondent's occupation, but it would have been by card or bank transfer.
- Brunswick only rarely accept cash payments. This tends to be from two or three tenants. Persons making cash payments are always given a printed statement. He had no recollection of Mr Smith ever coming into the office and paying in cash.
- Brunswick's premises do not have a letter box. It has a full glass door. Mail is delivered by the post man bringing it into the office.
- When the office is closed, a metal shutter is brought down over the door. The shutter comes down to the ground level. It would be possible to put an envelope through a gap in the shutter, but it would be liable to pop out at the bottom, through the gap between the ground and the bottom of the shutter.
- As far as he was aware no envelope was ever delivered to Brunswick's office, containing £600 in cash, during December 2017. No receipt was ever issued to the respondent, in respect of a payment of £600 in cash, in December 2017.
- As to the terms of Mr Smith's letter: Brunswick had sent rent statements to the respondent, showing the total balance due. It was difficult to communicate with her. She did not have an email address. They left messages on her phone, and texted her.

20. After Mr Priestman's evidence had been taken, and he had left the Tribunal room, the respondent was brought back in. The content of Mr Priestman's evidence was recounted to her.

21. As regards the rent statement attached to the application, the respondent initially accepted that the figures stated therein were correct, with the exception of the £600 said to have been paid by Mr Smith. She expressly accepted that, on that basis, she would still be £250 in arrears.

22. However, on it being pointed out, by the legal member of the Tribunal, that the

statement indicated only payments by debit card were made, from October 2017 onwards, the respondent then claimed, for the first time, that she had made a payment in cash, on 16 January 2018, at the same time as she had made a payment of that amount, by debit card. The respondent said that she had been given a receipt for that payment. That was not, however, produced to the Tribunal.

23. Ms Cargill indicated that this was the first time, as far as she was aware, that any suggestion had been made of a payment of cash by the respondent, in January 2018. Brunswick had no record of such a payment.

24. Brunswick's rent statement indicates that a payment was made by debit card, of £300, on 16 January 2018. The respondent was asked why she would have paid £300 by debit card, and £300 in cash, at the same time. She maintained that there were insufficient funds in her bank account to make full payment of £600 by debit card. She invited the Tribunal to check the bank account statement she had provided, in advance of the first CMD hearing. This is a statement of a current account in the name of the respondent, with the Royal Bank of Scotland. The statements are provided for the period from 30 September 2017 to 29 June 2018. The respondent maintained that this would show a withdrawal of the cash, by her, prior to 16 January, in order to make a payment in cash to Brunswick.

25. At this point, the respondent became tearful and upset. She asked to be allowed to go home. Ms Cargill indicated that she had nothing further to add. The Tribunal members were satisfied that they had sufficient information to make a determination. Accordingly, the hearing was brought to an end.

Reasons for decision

26. The Tribunal found Mr Priestman to be a credible and reliable witness, and entirely accepted his evidence.

27. The Tribunal did not accept the position of Mr Smith, stated in the letter of 1 May 2019. It seemed to the Tribunal inherently unlikely that he would put £600 in cash in an envelope, and post it through the letterbox of Brunswick (or a gap in the shutter,

on Mr Priestman's evidence). He would have not have been able to ask for a receipt for such a payment. There was no suggestion that either Mr Smith, or the respondent, sought to check with Brunswick that it had received this payment.

28. The Tribunal also places significance on the fact that, near the end of his letter, Mr Smith offers: "...to pay the £600 again if that brings matters to an end". That would be a surprising position to adopt, if Mr Smith had truly made the payment in the first place. It is more consistent with Mr Smith not have made the payment.

29. For these reasons, the respondent has failed to prove, on a balance of probabilities, that the payment was made by Mr Smith. The Tribunal finds in fact that no payment of rent was made, of £600 in cash, by the respondent or by Mr Smith on her behalf, during the course of December 2017.

30. The Tribunal also did not accept that any payment was made, in cash, by the respondent, of £300 on or about 16 January 2018, for the following reasons:

- The respondent claimed that she was given a receipt for that payment, but did not produce it.
- Had such a payment been made, the Tribunal would have expected the respondent to have said so, in her previous representations to the Tribunal.
- On checking through the bank statements produced by the respondent, it is clear that, on 16 January 2018, immediately before a payment of £302.00 was made to Brunswick (a £2 charge was added for payment by debit card) the balance of the respondent's account was £714.08. Accordingly, she would have had sufficient funds to make a payment of £600.
- There is no indication, in the bank statement, of a withdrawal of cash of £300 or more, leading up to 16 January.
- The bank statement, in showing certain payments to have been made by debit card from the respondent's account, is entirely consistent with the information given in Brunswick's rent account.

31. For these reasons, the Tribunal found in fact that the total amount paid by the

respondent, towards her rent, between 1 October 2017 and 31 May 2018, was £3,350. The total rent due for that period was 8 x £600 = £4,800. Accordingly, as at 31 May 2018, the arrears due by the respondent were £1,450. The sum of £600, being the respondent's deposit, has already been debited to the account. Accordingly, the Tribunal makes a payment order in the sum of £850, in favour of the applicant.

32. For the sake of completeness, it is necessary to record that the respondent was advised of the Tribunal new powers to make Time to Pay Orders and Time to Pay Directions, under the Debtors (Scotland) Act 1987. She did not indicate that she wished to apply for a direction under section 1 of the Act. However, she has the option of applying for a Time to Pay Order under section 5, once a charge is served, on behalf of the applicant.

33. The Tribunal's decision was unanimous.

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.

Signed **A Stalker**

Date 2 May 2019