



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

**Chamber Ref: FTS/HPC/CV/20/1536**

**Re: Property at 168A PITTENCRIEFF STREET, DUNFERMLINE, KY12 8AW (“the Property”)**

**Parties:**

**Mr Gordon McKay, East Gate, Hunnel Road, Gullane, EH31 2BG (“the Applicant”)**

**Miss Vanessa Hamilton, 2 Dean Drive, Crossford, Dunfermline, KY12 8PD (“the Respondent”)**

**Tribunal Members:**

**Gabrielle Miller (Legal Member) and Melanie Booth (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to be granted an order for payment amounting to £1630.46.**

**Summary of Discussion**

**Background**

1. An application was received with an email dated 16<sup>th</sup> July 2020. The application was submitted under Rule 111 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on the Respondent not maintaining rent payments.
2. A Case Management Discussion (“CMD”) was held on 20<sup>th</sup> October 2020 at 10am by teleconferencing. The Applicant was represented by Ms Danni Watson, Lothian Homes. The Applicant was not present. The Respondent was represented by Mr Wink Thompson, the Respondent’s stepfather. The

Respondent was not present. Matters could not be concluded at the CMD. In addition the Applicant had submitted extra information on the day prior to the CMD. Mr Thompson had not had the opportunity to peruse it. The Tribunal moved for the case to be moved onto a full hearing.

3. Mr Thompson has stated a defence that the Respondent was not able to give the Respondent notice to leave the property due to her mental health and that the property was in disrepair.
4. The Tribunal concluded that the next Tribunal would need the following addressed by the Applicant:-
  - a) What is the £100 fee stated in the application form for? This should be given a full detailed breakdown.
  - b) What repairs had been requested by the Respondent and what action had occurred to remedy this.
5. The Tribunal concluded that the next Tribunal would need the following addressed by the Respondent:-
  - a) Exactly how had the rent arrears occurred?
  - b) Was the Respondent receiving full payments from the DWP for her rent? If not how had she proposed to pay the shortfall?
  - c) What had caused her to not give her notice to leave on or around 20<sup>th</sup> November 2019?
  - d) Why did she consider that she did not need to pay the rent for her notice period?
  - e) Why was it that she considered that she was too ill to give her notice to leave yet she was able to text the Applicant in December 2019 and seek employment in February 2020.
  - f) What repairs needed done when she left the Property on 20<sup>th</sup> November 2019 and what had the Applicant informed her was to be done about this.
6. The Tribunal reserved its position to raise any other points or ask other questions as it felt would be appropriate at the next and any other hearing.
7. The Tribunal also issued the following direction to the parties:-
8. All parties are to lodge with the Housing and Property Chamber no later than close of business Friday 13<sup>th</sup> November 2020:-
  - a) A list of witnesses for the hearing
  - b) Any documents which are to be used as evidence
  - c) Any other materials that to be used at the hearing.
9. The Applicant is to lodge with the Housing and Property Chamber no later than close of business Friday 13<sup>th</sup> November 2020:-
  - a) A rent statement dated to 1<sup>st</sup> June 2020 which explains all payments to the rent account and states the DWP payments.
  - b) Notice as to when the DWP started and stopped making payments.

- c) Text messages between parties in December 2019 stating the Respondent's intention to remain in the Property.
  - d) Copy invoices for any work carried out to the Property in October and November 2020.
10. The Respondent is to lodge with the Housing and Property Chamber no later than close of business Friday 13<sup>th</sup> November 2020:-
- a) Medical evidence to show that the Respondent was unable to deal with her personal affairs as a result of her mental health condition;
  - b) Copies of any Power of Attorney or appointee positions made to assist the Respondent due to her mental health;
  - c) Medical evidence of carbon monoxide poisoning;
  - d) Evidence that the carbon monoxide poisoning resulted from being in the Property;
  - e) Evidence of repairs that needed to be carried out in the Property and dates reported to the Applicant;
  - f) Evidence of health issues caused from any repairs not carried out;
  - g) Full income and expenditure details from 1<sup>st</sup> November 2019 to 1<sup>st</sup> June 2020.
  - h) Copy of notice given to the Applicant regarding the repairs needed to be undertaken in the Property.
11. The Applicant lodged documentation as directed in the direction. The Respondents did not lodge any further documentation.

### The Hearing

12. A full hearing was held on 20<sup>th</sup> November 2020 at 10am by teleconferencing. The Applicant was represented by Ms Danni Watson, Lothian Homes. The Applicant was not present. The Respondent was represented by Mr Wink Thompson, the Respondent's stepfather. The Respondent was not present.
13. The Applicant submitted an email correspondence between the Applicant and Mr Thompson dated 18<sup>th</sup> November 2020. In this correspondence Mr Thompson offered £700 as a full and final settlement. This was refused by the Applicant. The Tribunal adjourned briefly to allow parties to discuss matters privately to determine if there was the possibility of an agreed settlement. As parties did not reach an agreement the hearing proceeded. Ms Watson had stated that the Applicant would want the amount of £700 plus £5 per week. Mr Thompson withdrew his offer of £700.
14. Ms Watson stated that the Applicant was looking for an order for the full amount to be granted. It is the Applicant's position that the Respondent is liable for the full amount of the arrears.

15. The Applicant had sent in a rent account with a reviewed layout. This was somewhat clearer to read albeit that it did not have a running total only a final total. It was noted that there was effectively three periods to the rent history.
16. The first period was 1<sup>st</sup> February 2018 to 31<sup>st</sup> March 2019. The rent payments were made by Mr Thompson or the Respondent. There had been four missed payments but then some payments had been made up. Mr Thompson accepted these arrears and did not dispute liability for them. The total arrears for this period were £1400 less payments of £500 which reduced the arrears to £900.
17. The next period was 1<sup>st</sup> April 2019 to 29<sup>th</sup> February 2020. During this period the Respondent was entitled to Universal Credit with the Housing Element paying her full rent charge. She also received a Discretionary Housing Payment ("DHP") each month which paid towards her arrears. The total amount paid by the DHP reduced the arrears to £580.46.
18. The third period was from 1<sup>st</sup> March 2020 to 31<sup>st</sup> May 2020. At this point there were no payments made. The arrears accrued by £1050.
19. After discussing the matter Mr Thompson stated that he was only disputing the arrears which were stated for March, April and May 2020 on the basis that the Respondent has mental health problems which left her unable to deal with the task of giving her notice to the Applicant. He had tried to obtain medical evidence but was not able to in the time scale given. The Tribunal noted that it was looking for the medical evidence to confirm that the Respondent did not have capacity to deal with her personal affairs which had meant that she was not able to text or email the Applicant to give her notice. Mr Thompson confirmed that he would not be able to get that from the medical evidence. He also confirmed that neither he nor his wife have a Power of Attorney for the Respondent. The Respondent had lost her phone when out with friends over the Christmas period but Mr Thompson was able to confirm that he has contact details for the Applicant.
20. The Tribunal enquired again about the Respondent having mental capacity to apply for a job in February 2020 and start that job thereafter. Mr Thompson had said that she just had to as she was no longer entitled to Universal Credit. She had not had a further entitlement to Universal Credit or the Housing Element since the last payment on 1<sup>st</sup> February 2020.
21. Mr Thompson had stated that he had tried to get the Respondent to hand her notice to leave on several occasions but she had failed to do so. He maintained that this was evidence of her having mental health problems as she would have otherwise handed her notice in. He said that it affected her greater and lesser at different times.
22. As the matter was focused on the arrears for the months of March, April and May 2020 and that the previously accrued arrears were not disputed Mr Thompson informed the Tribunal that the state of the Property was not an issue. He noted that the repairs had been done with the exception of some of the

damp. However, it was not a defence he was relying upon. He motioned for the Tribunal to consider an order at a repayment rate of £5 per week should it be found that the Respondent was liable for the arrears.

### **Decision**

23. The parties and the Tribunal did not dispute that the Respondent has mental health problems. The Tribunal considered the degree that her mental health problems prohibit her function in daily living tasks to be relevant. The Tribunal did not accept that the Respondent was so incapacitated by her mental health that she could not have sent a text or email to the Applicant. Mr Thompson had confirmed that medical evidence would not support that the Respondent did not have capacity to carry out the task of giving notice to leave to the Applicant. The Respondent had been well enough to apply and undertake a job in February 2020. Had she given her notice to leave at that point she would not have accrued the disputed arrears. There was no medical evidence to support her not having capacity. She does not have a Power of Attorney. The Tribunal rejected that payments should be made at £5 per week as it would take over 6 years to repay the debt. The Tribunal was satisfied that the Applicant was due the arrears. The Tribunal refused the addition of the £100 fee requested by the Applicant. Further information on this point was asked for by the Tribunal in the direction The Tribunal did not find the reason to be substantiated by supporting evidence.

24. The Tribunal found that the Applicant is entitled to be granted an order for payment amounting to £1630.46.

### **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.**

**G. M**

**20/11/2020**

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**Legal Member/Chair**

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**Date**

