



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 (1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/22/2593

Re: Property at 69A Clermiston Road, Edinburgh, EH12 6XA (“the Property”)

Parties:

Mrs Tamil Natarajan, 1 Corstorphine Hill Crescent, Corstorphine, EH12 6LH (“the Applicant”)

Ms Shaymaa Soud Al-Riyami, Mr Danut Tataru, 69A Clermiston Road, Edinburgh, EH12 6XA; 69A Clermiston Road, Edinburgh, EH12 6XA (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatrige (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order for the amount of £ 8,955 by the Respondents to the Applicant should be granted.

A: Background

1. The application for an order for payment of rent arrears under S 71 of the Private Housing (Tenancies) (Scotland) Act 2016 arising from a Private Residential Tenancy Agreement between the parties was made by the Applicant on 28 July 2022.
2. The following documents were lodged to support the application and are referred to for their terms and held to be incorporated herein:
 - a. Copy tenancy agreement between the parties over the property commencing on 24 August 2021.
 - b. Tenancy rent statement from 24 August 2021 to 23 August 2022

3. On 5 August 2022 the application and notification of the Case Management Discussion (CMD) was served by Sheriff Officers on the Respondents. The Tribunal was satisfied that the Respondents had the required notice of the CMD as set out in Rules 17 (2) and 24 (2) of the Procedural Rules.
4. On 19 August 2022 the Edinburgh CAB sent an email that they had been contacted by the first named Respondent and asked for further time to lodge representations. The Tribunal requested a mandate to be lodged. This was received on 22 August 2022. On 29 August 2022 the Tribunal received a further email from Edinburgh CAB advising that they would not represent the Respondents in the proceedings and asking the Tribunal to remove them as representatives from the file.
5. No formal representations were received from the Respondents.

B: Case Management Discussion

6. The Applicant attended the CMD with her husband and joint owner of the property Mr Srinivasan Natarajan. She was represented at the CMD by Mr Hugh Logan and Mr Stuart Miller from Northwood Edinburgh, Letting Agents. The Respondents did not participate in the teleconference. Mr Natarajan confirmed that he had agreed to his wife, the Applicant, being the landlord on the tenancy agreement.
7. The legal member explained the purpose of the CMD.
8. The agents confirmed that the arrears continued and currently sit at £9,950 as no payments had been received since the application was made and the arrears have increased due to there now also not having been any payment for the month of September in advance. Mr Miller and Mr Logan explained that the reason for the difference in dates stated in clause 8 and in the rent statement lodged arose because the tenancy was meant to start on 30 August 2021 and the Respondents had asked to move in slightly earlier. The start date had been amended in the tenancy agreement to 24 August 2021 but due to an oversight the due date for the rent stated in clause 8 had not been amended. They stated either way the arrears at present are over 9 months rent and the rent due for the month of September 2022 was now also due and had also not been paid. The Applicant and her representatives advised that the Respondents were a professional couple. Northwood Edinburgh had been informed when the Respondents were looking to rent the property that the first named Respondent had studied law in England and had come to Scotland to start employment for a private health company. Both Respondents had also been registered as directors for a company and thus the agents had recommended them as tenants to the Applicant. Northwood Edinburgh had made significant efforts to engage the Respondents regarding the rent arrears and had written several letters and telephoned the Respondents but only received a reaction at a house visit by Mr Miller when the second named Respondent had stated they "would move when the bailiffs came". The Respondents had not made any payment offer. The Applicant had not made any amendment application for the sum sought and was content for the order to be made for the amount of £8,955 as stated in the application and duly intimated to the Respondents.

C: Findings in Fact:

Based on the evidence lodged and the representations of the participants at the CMD the Tribunal makes the following findings in fact:

1. The property was let on a Private Residential Tenancy Agreement commencing on 24 August 2021.
2. The parties were the landlord and tenants of said Tenancy Agreement.
3. The tenancy continues.
4. The monthly rent, payable in advance, is £955 as per clause 8 of the tenancy agreement.
5. Rent arrears accrued as shown in the Rent Statement submitted for the period of 24 August 2021 to 23 August 2022 and no further payment has been received since.
6. The last payment had been made on 26 October 2021.
7. As at 2 September 2022 the amount due for payment by the Respondents to the Applicant is £9,950 because no rental payment has been made for the month of September 2022 in advance as required.
8. The Respondents are jointly and severally liable for the rent owed to the Applicant as stated in clause 1 of the tenancy agreement.
9. The application was made for a payment order for £8,955 and no application to amend the sum due to the current arrears had been received in advance of the CMD.
10. As at 2 September 2022 payment of rent for the amount of £8,955 as stated in the application form is still due by the Respondents to the Applicant.

D: Reasons for Decision:

1. The Tribunal considered that the material facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or
- (c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;
- (b) identifying what facts are agreed between the parties;
- (c) raising with parties any issues it requires to be addressed;
- (d) discussing what witnesses, documents and other evidence will be required;
- (e) discussing whether or not a hearing is required; and
- (f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

2. However, in terms of Rule 18 of the Rules of Procedure:

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

- (a) may make a decision without a hearing if the First-tier Tribunal considers that—
 - (i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and
(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,
a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

4. The Tribunal did not consider that there was any need for a hearing as there had been no representations from the Respondents and thus the arrears are not in dispute.

5. The Tribunal makes the decision on the basis of the documents lodged by the Applicant and the information provided by her and her husband and both representatives at the CMD.

6. The Tribunal is thus satisfied that the Respondents had entered into a Private Residential Tenancy Agreement with the Applicant for the property. The rent was paid as set out in the rent statement lodged. No application for a time to pay direction or any other representations were provided by the Respondents. The amount stated in the application was due and resting owing as of the date of the CMD and the Applicant was content for the order to be limited to the amount of £8,955 intimated to the Respondents in the original application as fair notice of said amount had been given to the Respondents and they had not disputed the amount. As the amount is due and not disputed there is no need for a hearing and the Tribunal thus grants a payment order for the amount of £8,955 for arrears of rent.

Decision:

The Tribunal grants the order for payment of the amount of £8,955 by the Respondents to the Applicant. The 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.



Petra Hennig McFatridge

Legal Member/Chair

2 September 2022

Date