



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 2016**

Chamber Ref: FTS/HPC/CV/18/1760

Re: Property at 14/3 Loganlea Avenue, Edinburgh, EH7 6PG (“the Property”)

Parties:

Mr David McGranaghan, 13 Albina Way, Baldivis, Western Australia (“the Applicant”)

Ms Olivia Keenan, for Jackson Boyd Lawyers LLP (“the Applicant’s representative”)

Mr Miroslaw Fornal, 14/3 Loganlea Avenue, Edinburgh, EH7 6PG (“the Respondent”)

Attendees at CMD:

The Respondent

The Applicant’s representative

Mr Michal Solach, supporter for the Respondent

Ms Kaja Gizegorczyn, Polish Interpreter arranged by SCTS

Tribunal Member:

Aileen Devanny (Legal Member)

Decision

The Tribunal decided to review the earlier decision made on 10 September 2018 to grant an order for payment for the sum of £1,302.17 by the Respondent to the Applicant and to consider the application anew. This approach was not challenged by the parties.

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment in the sum of £1,112.25 should be made for arrears of rent due from 1 June 2017 until 30 November 2018.

Background

1. On 12 July 2018 the Applicant lodged an application under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber Rule of Procedure. The application was for an order for payment of rent arrears for the above named Property.
2. This case called for a case management discussion (CMD) on 16 November 2018 before the Tribunal. A previous case management discussion took place on 10 September 2018 when the Tribunal sitting at that time decided in the absence of the Respondent to grant an order for payment for the sum of £1,302.17 by the Respondent to the Applicant; required a statement of loss from the Applicant together with an application to amend to incorporate the additional rent arrears which had accrued; and to fix a further case management discussion.
3. Following the case management discussion on 10 September 2018, it has come to light that on 31 August 2018 an e-mail was received by the Tribunal administration from the Respondent stating that he was seeking an adjournment of the CMD due to be held on 10 September 2018. His e-mail disclosed that the Respondent was trying to arrange representation and he asked that the CMD be rescheduled. The administration for the Tribunal is provided by Scottish Courts and Tribunal Service.
4. This request for a postponement from the Respondent was not actioned and not put before the Tribunal which sat on 10 September 2018.
5. The Respondent did not attend the CMD on 10 September 2018 but received a copy of the note on the CMD and decision outcome made on 10 September 2016.
6. At the CMD held on 16 November 2018 the Respondent attended and indicated that he wished to challenge the payment order and sum due in rent arrears. It was when considering the papers for this CMD that the Scottish Courts and Tribunal Service administration oversight came to the attention of the Tribunal.
7. A further CMD was fixed for 17 December 2018 and the Applicant's representative and Respondent were made aware of this further CMD. Directions were issued to the parties to help progress the application.
8. Mindful of the overriding objectives of the Tribunal laid down in Rule 2 and 3 of the Chamber Procedural Rules and in the interests of justice, the Tribunal sitting on 16 November 2018 propose to review the decision to grant the

payment order at its own instance and to allow the full facts and claim to be considered anew at the CMD to be held on 17 December 2018. This would have the effect that no order for payment was issued for this application on 10 September 2018. The reason for this proposal is the administrative failing to action the request for postponement received in advance of the last CMD and failure to communicate an outcome to the Respondent's request which may have lead the Respondent to consider that the CMD due to be held on 10 September 2018 was not taking place. The Respondent attended the CMD on 16 November 2018 and an interpreter assisted throughout. It is acknowledged that there were communication difficulties with the Respondent but he did indicate on 16 November his wish to challenge the application and sum sought. The proposal to consider the application anew will allow full examination of the issues and any defence intimated by the Respondent. The decision on 10 September 2018 was made in the absence of the Respondent.

9. In terms of Rule 39(4), the views of the parties were sought in relation to the proposed review which would have the effect of considering the civil proceedings application anew on 17 December 2018. The views of both parties were sought in relation to whether or not the proposed review should be disposed of without the need for a hearing. The views sought from the Applicant and Respondent to be submitted to the Tribunal within 14 days of the date of receipt of this proposed review submission. If no further views are received within the timescale indicated aforesaid, the Tribunal stated that it would itself proceed to reach a determination on the proposed review without further recourse to the parties.
10. Neither party submitted views in writing on the proposal to consider the civil proceedings anew on 17 December 2018.
11. The Tribunal, on its own initiative, issued directions to the parties relating to the progress of the application and the additional information to be provided by parties. These directions were made in terms of Rule 16 of the Procedural Rules and are contained in the attached Directions.
12. In advance of the CMD the Applicant lodged a schedule of rent arrears from the start of the tenancy on 1 June 2017 until 30 November 2018. The schedule stated that the rent arrears totalled £1,662.25 and the Applicant sought an order for payment of this sum and to amend the application accordingly.
13. The Respondent indicated in written submissions lodged in advance of the CMD in response to directions that he admitted that he was in rent arrears and considered that as at 28 November 2018 the arrears totalled £1,302.17. This included a payment of £550 he made in October 2018. He lodged an e-mail dated 27 October 2018 from the Landlord's sister which indicated that the payment of £550 received was accepted as a contribution to settle the earliest month that the rent payments went into arrears. It stated that the payment is accepted only on the basis that it does not impact on notices bringing the lease to an end. The Respondent explained the background behind him falling into rent arrears and his current income and expenditure.

The Second Case Management Discussion held on 17 December 2018

14. The Applicant's representative appeared as did the Respondent and his supporter and a Polish Interpreter. The parties were told in advance that the Tribunal could decide the matter at a CMD if satisfied it had sufficient evidence and it was fair to do so.
15. Mr Solach helpfully assisted the Respondent throughout the proceedings with communication between the Polish translator and the Respondent.
16. The Applicant's agent indicated that she had no objection to proceeding anew with the payment claim following the review.
17. The Respondent at the CMD indicated that he paid the rent by bank transfer and had come to an arrangement with a neighbour whom he believed was the agent for the landlord that the rent should be reduced from £650 per month to £550. He stated that this occurred to reflect that the heating does not work properly and the windows were draughty with tape around them. When questioned he considered that this arrangement was made in September 2018 to start from October 2018. He believed that the neighbour had phoned the landlord to seek authority for this arrangement. He produced no written paperwork to verify this arrangement and was unsure of the identity of the neighbour.
18. A short break in the proceedings allowed the Respondent to check amongst his papers that he had no written confirmation of the rent reduction arrangement. It also allowed an opportunity for the Applicant's representative to speak to the partner in her firm who dealt with the landlord to confirm the most recent instructions.
19. The Applicant's representative indicated that the partner of her firm stated that he took instructions from the landlord's sister and recent communications were all based on the monthly rent being £650 per month. No mention had been made in any instructions of a reduced rent or of any neighbour acting as agent. An arrangement for reduction of rent would have been confirmed in writing to the tenant by the landlord. However, the statement of rent arrears submitted to the Tribunal was not accurate as it did not narrate the most recent rental payment made by the Respondent of £550. The Applicant's representative did not consider that the terms of the e-mail sent by Karen McGranaghan on 27 October 2018 altered the amount of monthly rent payments but accepted that the most recent payment in the absence of specific allocation to a rental period would be allocated in accordance with the e-mail to the earliest debt. This would result in the Respondent failing to pay the rent payment in advance for the month of December. As a consequence of the recent payment, the rent arrears for the period to 30 November 2018 amount to £1,112.25.
20. The Respondent stated that he did not consider that he had any document from the landlord to confirm a change in rent payment.

Findings in Fact

1. The parties entered into a tenancy agreement for the Property.
2. The Respondent was due to pay the Applicant rent at the rate of £650 per calendar month.
3. The rent arrears due from 1 June 2017 until 30 November 2018 are £1,112.25.
4. The tenancy deposit of £650 is registered with Safe Deposits Scotland and is not included in the statement of rent arrears.

Reasons for Decision

Having been satisfied that the amount of £ 1,112.25 is due by the Respondent to the Applicant for the rent for the Property covering the period to 30 November 2018, a payment order for that sum is made.

The Tribunal was not persuaded that the monthly rent payments have been reduced to £550 per month as no documents could be produced to support the arrangement; the Respondent was vague about the identity of the neighbour who it is alleged made the arrangement and the time when the arrangement was made; and there is no evidence to support that the neighbour had authority to make any adjustment of rent which would bind the landlord.

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.

Aileen Devanny

Legal Member/Chair

Date

17 December 2018