



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/22/0949

Re: Property at F 14 Keptie Street, Arbroath, Angus, DD11 1RG (“the Property”)

Parties:

Ftp (angus) Ltd, 31A North Bridge Street, Bathgate, West Lothian, EH48 4PJ (“the Applicant”)

Miss Cerys Collier, F 14 Keptie Street, Arbroath, Angus, DD11 1RG (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Angus Lamont (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 in the sum of Three Thousand Two Hundred and Fifty pounds only (£3250.00) be granted in favour of the Applicant and against the Respondent.

Background

1.This application for a payment order in terms of Rule 111 of the Tribunal Rules of procedure was first lodged with the Tribunal on 31st March 2022 along with a related eviction order application with reference HPC/EV/22/0947 and both applications were accepted by the Tribunal on 11th May 2022. A case management discussion was set down for 20th July 2022 at 2pm for both applications.

Case Management Discussions

2.At the case management discussion on 20th July the Applicant did not attend but was represented by Mr Lawson solicitor of MML Legal. The Respondent did not attend and was not represented. The applications had both been served on the Respondent

by Sheriff officer putting these through the letterbox at the property on 7th June 2022. Mr Lawson moved to proceed in the absence of the Respondent and the tribunal agreed to this request given that the papers had been lawfully served on the Respondent and fair notice appeared to have been given to her in terms of the Tribunal rules of procedure.

3. The Tribunal had sight of both applications for a payment order and the related application for an eviction order, a tenancy agreement, a Notice to Leave, proof of delivery of the Notice to Leave, a tenancy statement, ledger entries in relation to rent payments, a Notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003, an email intimating that notice to the local authority, emails and letters between Letting Agents and the Respondent and letters in terms of the pre action protocol requirements.

4. Mr Lawson requested a payment order and he submitted that it was appropriate to grant the order. He pointed to the fact that the Respondent had been given ample opportunity but had not engaged regarding the rent arrears. The tenancy had commenced on 3rd September 2020 and the monthly rent was £450. Mr Lawson understood that only three payments of rent had been made since July 2021. He understood a payment had been made in August 2021, February 2022 and on 5th May 2022 a payment of £1500 had been made. The rent arrears as of 20th July 2022 stood at £3249.94.

5. The Tribunal had sight of emails to the Respondent regarding outstanding rent and letters sent to her. Some email contact had been made by the Respondent in 2021 on the question of rent payments and in August 2021 she had emailed letting agents indicating that her money had been split and that the rent for that month would come in two payments. Nothing in the emails appeared to set out proposals for payment of rent arrears and in November and December 2021 agents acting on behalf of the Applicant wrote to her enclosing information as to where she could receive support and setting out her rights as regards eviction.

6. Mr Lawson did not have much information regarding the Respondent's financial circumstances but said that he understood that the Respondent was believed still to reside at the property alone, but it was not known if she worked or was in receipt of benefits. There had not been much contact between the landlord and the Respondent. When inspections had been carried out at the property the Respondent was not usually present. There had been an attempt at contact a few weeks before the case management discussion but again the Respondent had not been present at the property at that time.

7. The Tribunal raised matters regarding the level of arrears said to be due. The tenancy rent statement lodged was unclear in its terms and referred to sums which included pounds and pence when the rent was £450 per month. It was not clear what the level of rent arrears was as of July 2021, as of the date of service of the Notice to Leave in September 2021, as at the date of the application and the date of the case management discussion on 20th July 2022. An adjournment was granted and Mr Lawson was able to clarify why some payment entries were in pounds and pence and this appeared to be due to the system used by the Letting Agents which split sums paid towards rent arrears between different rental months as appropriate. The total amount of rent arrears at the dates of the service of the Notice to Leave, July and

September 2021, the date of the application and the date of the case management discussion was still unclear, and the Tribunal decided that it was appropriate to continue the case management discussion to a later date to clarify these matters and to clarify which rent statement was served along with the Notice to Leave.

8. The case management discussion for both applications was continued until 7th October 2022 at 10am. On that date Mr Lawson again appeared for the Applicant together with an observer whose details were given to the Tribunal. There was no appearance by or on behalf of the Respondent and the Tribunal was aware that she had been sent an email advising of the date of the case management discussion. Mr Lawson submitted that the Tribunal should again proceed in her absence and the Tribunal agreed to this request given that the Respondent again appeared to have received fair notice of the date and time of the case management discussion.

9. Since the case management discussion on 20th July 2022 Mr Lawson had lodged further written representations regarding the rent by email dated 11th August 2022. He had also lodged a request to increase the sum being sought by way of a payment order to £3250 and the representations and the request to amend the sum being requested had been sent to the Respondent by the Tribunal on 15th August 2022.

10. The Tribunal considered whether to allow the sum requested in the payment order application to be increased. The terms of Rule 14A of the Tribunal rules of procedure had not been complied with in its entirety as the Applicant's representative had not intimated the request to the Respondent but the request had been intimated by the Tribunal. The Tribunal considered the terms of Rule 14A(2) and took the view that the amendment of the sum requested could be permitted as this section gave the Tribunal some discretion and timeous notice of the request to change the sum being requested had been given to the Respondent, albeit by the Tribunal.

11. At the case management discussion on 7th October 2022 Mr Lawson confirmed that as of the date of the Notice to Leave the rent arrears were £1150 and he had produced the rent statement sent with the Notice to the Applicant. The sum of £250 had been paid towards rent arrears in September 2021 but the Letting Agents system had not updated to show that payment in the rent statement sent with the Notice to Leave. It showed arrears of £1400 at that time. No rent payments had been made in July 2021 and no rent payments had been made since the first case management discussion in July 2022. The rent arrears being sought amounted to £3250.

12. Mr Lawson gave additional information to the Tribunal regarding the Respondent and her circumstances. He had spoken with the Applicant and now understood that the Respondent's income derived from benefit, but any rent payments paid were paid by the Respondent. No rent had been received directly from the benefits agency by the Applicant. It was now understood that the Applicant did not live alone at the property but has a young child between the ages of 1 and 2 although it was not known if the child lives at the property all of the time. Mr Lawson indicated that the Respondent was believed still to reside at the property and she had not corresponded with the Applicant nor had she returned keys. Mr Lawson submitted that it was reasonable to grant a payment order given the level of rent arrears and failure of the Respondent to properly engage with payment of the rent arrears.

13.The Tribunal members considered that they had sufficient information to allow a decision to be made and that the proceedings had been fair.

Findings in Fact

14.The Applicant and respondent entered into a private residential tenancy agreement at the property with effect from 3rd September 2020.

15. The monthly rent payable in terms of the tenancy is £450.

16.Rent arrears started to accrue early in the tenancy and in September 2021 when a Notice to Leave was served the arrears stood at £1150.

17.Agents for the Applicant contacted the Respondent by email regarding arrears over a number of months and no proposals for payment of the outstanding arrears were received.

18.Rent arrears continue to accrue, and no recent payments have been made.

19.The rent arrears accrued as of August 2022 are £3250.00.

20.The sum of £3250 is lawfully due by the Respondent to the Applicant.

Reasons for Decision

21.The Tribunal granted a payment order given the history of rent arrears and the fact that these continue to accrue. The Tribunal was satisfied that the sum sought was lawfully due to the Applicant and other attempts to obtain the sum due from the Respondent had been unsuccessful rendering a payment order necessary.

Decision

The Tribunal determined that a payment order in the sum of Three Thousand Two Hundred and Fifty pounds only (£3250.00) be granted in favour of the Applicant and against the Respondent.

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.

7.10.22

Legal Member/Chair

Date