

Housing and Property Chamber

First-tier Tribunal for Scotland



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 2014

Chamber Ref: FTS/HPC/CV/22/2414

Re: Property at 53 MacDonald Crescent, Clydebank G81 1DG (“the Property”)

Parties:

Mrs Helen Cohn, 12 Fintry Gardens, Bearsden, Glasgow, G61 4RJ (“the Applicant”), and

Bannatyne, Kirkwood France & Co, 16 Royal Exchange Square, Glasgow, G1 3AJ (“the Applicant’s Representative”) and

Ms Chloe McLean, formerly residing at 53 MacDonald Crescent, Clydebank G81 1DG and now residing at 10 Cherry Crescent, Clydebank G81 3JA (“the First Respondent”) and

Ms Mandy Coleman, 12 Craigs Avenue, Clydebank, G81 5LF (“the Second Respondent”)

Tribunal Members:

**G McWilliams- Legal Member
A Moore- Ordinary Member**

Background

- 1. The Applicant had applied under Rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the 2017 Rules”) (Application for civil proceedings in relation to a private residential tenancy) for an order for payment in respect of rent arrears.**

Case Management Discussions

- 2. A Case Management Discussion (“CMD”) proceeded remotely by telephone conference call at 10am on 27th October 2022. Reference is made to the Notes on that CMD which were prepared by the Tribunal and issued to the parties.**

3. A further CMD proceeded remotely by telephone conference call at 10am on 15th December 2022. The Applicant's Representative's Ms A Wooley and the Respondent Ms Mclean attended. The Second Respondent, Ms Coleman, did not attend and was not represented.
4. Ms Wooley referred to the updated rent statement which she had sent to the Tribunal's Office on 14th December 2022. She submitted that no rental payments had been made in November and December 2022 and that the outstanding rent arrears amount now due to the Applicant is £3,520.00. Ms Wooley stated that she had been liaising with the Letting Agent, for the Property, and that the keys for the Property had not been returned and the Applicant had not been able to recover possession. Ms Wooley sought the grant of the Eviction Order as well as an Order for Payment of the outstanding rent arrears amount.
5. Ms McLean stated that she had moved with her child to their new accommodation at 10 Cherry Crescent, Clydebank, G81 3JA on 4th November 2022. She said that she still had some items to remove from the Property and wished to carry out some cleaning there. She stated that she had been delayed in attending to matters as her step-father has recently been hospitalised. Ms McLean said that she had been liaising with the Letting Agent and had proposed return of the keys on Monday 19th December 2022, as well as a repayment arrangement. Ms McLean then forwarded copies of her recent online communications with the Letting Agent for consideration by the Tribunal and Ms Wooley. Ms McLean accepted that the outstanding rent arrears amount is £3,520.00.
6. Having heard Ms McLean's submission, and considered the terms of the copy communications which she had sent, Ms Wooley repeated her request for grant of both Orders, for Eviction and Payment. Ms Wooley also stated that, having heard Ms McLean's submission today, the Applicant would not seek interest on the Payment sum sought.

Statement of Reasons for Decision

7. In reaching their decision the Tribunal had regard to the terms of Section 71 of The Private Housing (Tenancies) Act 2016 provides as follows:
 - (1) In relation to civil proceedings arising from a private residential tenancy-
 - (a) the First-tier Tribunal has whatever competence and jurisdiction a sheriff would have but for paragraph (b),
 - (b) a sheriff does not have competence or jurisdiction.
 - (2) For the purposes of subsection (1), civil proceedings are any proceedings other than-
 - (a) the prosecution of a criminal offence,
 - (b) any proceedings related to such a prosecution.

8. Accordingly, the Tribunal has jurisdiction in relation to claims by landlords (such as the Applicant) for payment of unpaid rent against a tenant and guarantor (such as the respective Respondents) in respect of a PRT such as this.
9. Having considered the submissions of Ms Wooley and Ms McLean, the Tribunal decided that it was in the interests of justice to grant both the Eviction and Payment Orders sought. It was accepted by Ms McLean that the rent arrears amount, of £3520.00, was correct and owing. Regarding the Second Respondent, Ms Coleman, Ms McLean stated that Ms Coleman had not attended at the CMD's on 27th October 2022 and 15th October 2022 as Ms McLean thought that the onus was on her to deal with both Applications. The Tribunal noted that Ms Coleman had been effectively served with the papers, including notification of the CMD on 15th December 2022, by recorded delivery post on 4th November 2022. Ms Coleman had had the opportunity of attending at the CMD on 15th December 2022, and making representations in respect of the Order for Payment sought, but did not do so. In the circumstances, the Tribunal decided, and stated to Ms McLean and Ms Wooley, that as Ms Coleman is contractually obliged to pay the rent arrears due, as a named Guarantor in the parties' Private Residential Tenancy Agreement ("PRT"), it was fair and just that the Order for Payment be granted against both Ms McLean and Ms Coleman, jointly and severally, as sought by Ms Wooley. The Tribunal was satisfied that there was an outstanding balance of rent arrears of £3520.00 and that it was reasonable to grant an order for payment by the Respondents, jointly and severally, to the Applicant in that amount.
10. The Tribunal also stated to Ms Wooley and Ms McLean that it was unfortunate that matters had not been resolved since the CMD on 27th October and that now, on balance, the Tribunal considered that it was fair and just to afford the Applicant the protection of the grant of the Orders sought. The Tribunal expressed their hope that Ms McLean would now vacate the Property and reach an arrangement for repayment of the rent arrears as soon as possible so that the Orders do not require to be enforced. Ms McLean said that she understood the Tribunal's reasoning for granting the Orders. Ms Wooley confirmed that Ms McLean should liaise directly with the Letting Agent regarding return of the keys for the Property and a repayment arrangement.

Decision

11. Accordingly, the Tribunal made an order for payment by the First Respondent, Ms Chloe McLean, and the Second Respondent, Ms Mandy Coleman, jointly and severally, of the sum of THREE THOUSAND FIVE HUNDRED AND TWENTY POUNDS (£3520.00) Sterling to the Applicant, Mrs Helen Cohn.

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.

Gerald McWilliams

15th December 2022

Legal Member

Date _____