



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/23/1474

Re: Property at 37 Moray Park Gardens, Culloden, Inverness, IV2 7FY (“the Property”)

Parties:

Mr Paul Gardner, 260 Cromwell Lane, Burton Green, Coventry, CV4 8AP (“the Applicant”)

Mrs Heather Grant, Mr Mike Grant, Flat 7, 10 Bishops Hill Road, Tornagrain, Inverness, IV2 8AR; Flat 7, 10 Bishops Hill Road, Tornagrain, Inverness, IV2 8AR (“the Respondent”)

Tribunal Members:

Anne Mathie (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order in the sum of £39,780 be made against the Respondents in favour of the Applicant in respect of rent arrears.

Background

1. An application was submitted dated 5 May 2023 in terms of Rule 111 of the Chamber Rules for a payment order for rent arrears in the sum of £39,780. Along with the application form, the Applicant’s agents lodged the following documents:
 - Rent Arrears Statement
 - Tenancy agreement
 - Paper apart
 - Order for Possession FTS/HPC/EV/22/3108
 - Email from Respondent dated 3 February 2023
 - Email to Respondent dated 3 February 2023
2. The Tribunal wrote to the Applicant’s agents on 7 June 2023 asking for the following further information:

- The rent payment for April appears to be pro rata. Please advise if the tenant has vacated the property and if so, when.
 - Please advise if the tenant has left if you have a further address for the Respondent as we require a current home address to serve the papers on the Respondent and if they have left and you do not have a forwarding address then you may wish to apply for service by advertisement using the application form you will find on our website. Please note that to accept a service by advertisement form we will need to see evidence you have tried and failed to trace the Respondents by using a sheriff officer or tracing agent.
3. The Applicant's agents responded by email dated 20 June 2023 in the following terms:
- "The rent payment for April was calculated on a pro rata basis to reflect to execution date in the Order of 24 April. We do not have a forwarding address for the Respondents so should be grateful if you would allow a four week extension to provide this information in order that we can carry out a trace enquiry."*
4. The Applicant's agent emailed the Tribunal again on the 10 July 2023 to advise that they had instructed Sheriff Officers to carry out a trace enquiry and would be grateful if it would be confirmed that the extension request had been granted.
5. The Tribunal replied on 13 July 2023 in the following terms:
- *"Please provide a time scale as to when you will be able to provide the up to date address for the Respondents or lodge a Service by Advertisement application accompanied by a negative trace report from Sheriff Officers or a tracing agent. Please note that the Tribunal cannot keep cases "open" and pending indefinitely. If you find that at present you cannot provide the above please consider withdrawing the application and re-raising it when the information becomes available.*
 - *Please amend the application to the correct rule. You made the application under rule 111 which relates to tenancies under the Private Housing (Tenancies)(Scotland) Act 2016 however the tenancy agreement provided indicates that this was entered into prior to the commencement of the 2016 Act and is a tenancy under the Housing (Scotland) Act 1988."*
6. The Applicants agent replied by email dated 14 July 2023 with an application amended to be in terms of Rule 70 of the Chamber Rules and with a copy of an email from Sheriff Officers confirming that the tracing enquiry should be complete by 31 July.
7. The Applicants agent emailed the Tribunal on 1 August 2023 with a copy of the trace enquiry report confirming the Respondents new address.
8. The application was accepted and assigned to a case management discussion today. Copies of the application and papers and notification of the

case management discussion were served on all parties. The Respondents were advised that they were required to submit any written representations by 13 September 2023.

9. In the notification letters to the Respondents they were advised:
“The tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision on the application which may involve making or refusing a payment order. If you do not take part in the case management discussion, this will not stop a decision or order being made by the tribunal if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair.”
10. No written representations have been received.
11. The Applicant’s agent contacted the Tribunal on 25 September 2023 seeking to lodge a copy of the Case Management Discussion Note dated 19 December 2022 and the written decision and statement of reasons dated 20 March 2023 in the related eviction case (FTS/HPC/EV/22/3108). The Applicant’s agents also wished to lodge a copy of the relevant tenancy agreement.

The Case Management Discussion

12. The case management discussion took place today by teleconference. The Applicant was not in attendance and was represented by Mr Duncan Swarbrick, Solicitor. The Respondents did not attend and were not represented.
13. As a preliminary matter, Mr Swarbrick requested that the productions sent to the Tribunal on 25 September be lodged although late. This was allowed by the Tribunal.
14. The Tribunal noted that the Respondents were not in attendance and were not represented. Nor had any written representations been lodged.
15. The Tribunal also noted that this application now proceeded as a Rule 70 application rather than a Rule 111 application as it originally was.
16. The Applicant’s agent moved the Tribunal to grant the payment order as requested. This application has been raised after a full hearing in the related eviction application (FTS/HPC/EV/22/3108). In the written decision following the full hearing no determination had been made as to the exact amount of rent arrears outstanding. The eviction order had been granted on the basis that more than three months rent was outstanding and there were considerable rent arrears outstanding. The case management discussion in respect of the eviction application had been attended by the Respondents. They had been asked to lodge written representations specifically addressing whether they were withholding rent or seeking an abatement of rent. Reference was made to paragraph 43 of the eviction decision which states:

“... The Tribunal took the view that the Respondents were not acting in good faith by failing to retain rent so that it could immediately be paid when the repairs were carried out. By their own admission, the Respondents were in financial difficulty due to Mrs Grant becoming unemployed from 2019 to 2022. The Tribunal took the view that financial difficulty was a significant factor in their failure to pay the rent over such a considerable period. In any event, the Respondents said at CMD, and again in recent emails to the Applicant’s representative, that they intended to commence making payment of rent. This appeared to contradict any claim to be withholding the rent pending repairs.”

17. At the case management discussion in the related eviction case, the Tribunal pointed out that, even if arguments of abatement or withholding of rent were successful, it was very unlikely that no rent was due. The Applicant’s agent advised that there were three bathrooms in the Property and the inability to use part of one of them would not be enough to significantly abate the rent due. In any event, we don’t have any of the Respondents arguments in this regard.
18. On questioning by the Tribunal, the Applicant’s agent was not aware of any deposit having been paid. There was discussion of the figure stated outstanding in respect of the April 2023 rent payment which had been calculated pro rata due to the eviction order having been executed on 24 April 2023 which was part way through the month. On further discussion the Applicant’s agent confirmed he had slightly understated the figure due for April 2023.
19. On further questioning by the Tribunal, the Applicant’s agent confirmed no further payments of rent had been received and there had been no communication with the Respondents in respect of settlement proposals. There had been a suggestion at one point that the Respondents may have retained a lump sum of rent in respect of the Property but there had been no offers to pay this to the Applicant and previous offers to pay in instalments had not been followed through. The Applicant’s agent noted the report from Sheriff Officers
20. The Applicant’s agent advised that, prior to the eviction application being raised, the Respondents had received pre-action protocol correspondence advising them of sources of help and advice but there had been no settlement proposals forthcoming as a result of this.
21. The Applicant’s agent understood the Property to now have been sold but was not dealing with the sale.

Findings in Fact

22. The Tribunal made the following findings in fact:

1. The parties entered into an assured tenancy agreement commencing on 27 August 2017. The Applicant required to have an eviction order executed on 24 April 2023 for vacant possession of the Property.
2. In terms of the tenancy agreement, rent was due to be paid in the sum of £850 per calendar month.
3. No payments of rent had been received since May 2019.
4. The sum outstanding for rent arrears was £39,780

Reasons for Decision

23. The Tribunal took into account all the written submissions and papers before it along with the oral submissions of the Applicant's agent today. Apart from a suggestion at the case management discussion in the related eviction case on December 2022 that this was a case where some abatement of rent may be appropriate, and despite the Respondents being requested to seek advice on this and lodge written arguments in this respect in the related eviction case, no written arguments or evidence were received in the eviction case and the Respondents had not submitted written representations in the present application and had not attended the case management discussion. There was nothing further before the Tribunal contesting that the rent arrears were due. The Tribunal found, on the balance of probabilities, that the sum of £39,780 sought by way of rent arrears was due.

Decision

24. To grant a payment order in the sum of £39,780 against the Respondents in favour of the Applicant in respect of rent arrears.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.



29 September 2023

Legal Member/Chair

Date

Anne Mathie