



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”)

Chamber Ref: FTS/HPC/CV/22/2237

Re: 4 Abbotsford Avenue, Rutherglen, Glasgow, G73 3NX
 (“the Property”)

Parties:

**Mr Steven Somerville and Mrs Vivienne Somerville, 768 Thornapple Drive, Naperville, Illinois, 60540-6314, United States
 (“the Applicants”)**

**Mr Steven Corbett, 4 Abbotsford Avenue, Rutherglen, G73 3NX
 (“the Respondent”)**

Tribunal Members:

Pamela Woodman (Legal Member) and Frances Wood (Ordinary Member)

Present:

The case management discussion in relation to case reference FTS/HPC/CV/22/2237 took place at 10am on Wednesday 18 January 2023 by teleconference call (“**the Second CMD**”). The Applicants were not present at the CMD but were represented by Mrs Lorna Turner (“**Applicants’ Representative**”) of Leonards Solicitors Limited. The Respondent was present at the CMD. The clerk to the Tribunal was Gerry Smith. This case was conjoined with case reference FTS/HPC/EV/22/2236 and heard at the same time.

BACKGROUND

1. The Second CMD was the second case management discussion to be held in relation to this case, the first case management discussion having been held on Friday 14 October 2022 (“**First CMD**”). A copy of the notes of the First CMD are set out in the Appendix to this decision and were considered by the Tribunal Members (along with the paperwork provided in the intervening period and submissions made during the Second CMD) in reaching their decision.

2. The Applicant made an application to the Tribunal under section 71(1) of the 2016 Act and in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended. More specifically, the application was made in terms of rule 111 (*Application for civil proceedings in relation to a private residential tenancy*) of the HPC Rules.
3. The order sought from the Tribunal was an order for payment against the Respondent in respect of the Property.
4. Following the First CMD, directions were issued in the following terms:

“The Tribunal, on its own initiative and for the purpose of making inquiries, gives the following Direction to the parties as to the conduct and progress of this Application in terms of Section 16 of Schedule 1 to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (as amended):

1. *By 9am on Wednesday 19 October 2022, the Applicants (or a representative on their behalf) and the Respondent are each respectively required to submit to the Tribunal (with a copy sent to the other party) details of any days in December 2022 and January 2023 on which they would not be available for a further case management discussion.*
2. *By 9am on Monday 21 November 2022, the Respondent (or a representative on his behalf) is required to submit to the Tribunal (with a copy sent to the Applicants) written submissions in relation to the alleged non-payment of the rent for the Property, together with all (if any) evidence (including but not limited to e-mails, WhatsApp messages, etc) on which the Respondent may seek to rely in this respect.*
3. *By 9am on Monday 5 December 2022, the Applicants (or a representative on their behalf) are required to submit to the Tribunal (with a copy sent to the Respondent) any written submissions which the Applicants wish to make in response to the submissions from the Respondent, together with all (if any) evidence on which the Applicants may seek to rely in this respect.*

Reason for Direction

To obtain further information and documentation in order to provide evidence to support and/or to clarify details in the application paperwork and to assist the Tribunal in the determination of the case.”

5. The Respondent had been invited to provide, but had not provided, any written submissions in advance of the First CMD or the Second CMD and, importantly, the Respondent also failed to comply with direction 2 (as set out above).
6. The Applicants’ Representatives had provided an inventory of productions (with accompanying productions) (“**Applicants’ Productions**”) and written submissions from Mr Somerville, one of the Applicants, on 2 December 2022 and had complied with direction 3 (as set out above).

7. In addition, the Applicants' Representatives had applied (in terms of rule 14A of the HPC Rules) by e-mail on 29 December 2022 (and duplicated on 4 January 2023) to amend the sum claimed to £15,400 (representing 14 months of unpaid rent at a rate of £1,100 per month).
8. The Applicant's Representative and the Respondent respectively confirmed that they held (or had received) copies of the documents referred to above.

Preliminary issues

Further postponement

9. The Respondent sought a further postponement of the case.
10. The Respondent explained that he had sought legal advice at the end of October 2022 following the First CMD. He explained that he had made an appointment with a lawyer for the beginning of December 2022 (for a date falling after 5 December 2022, when he knew that the Applicants' submissions were due in terms of direction 3) but that the lawyer he had instructed was off and so the meeting did not take place. A meeting was then arranged for early January 2023 with a lawyer but the lawyer was off sick on that date and so, again, the meeting did not take place.
11. The Applicants' Representative opposed the application for a further postponement of the case and noted that the Respondent had had 3 months to obtain representation.
12. The Tribunal Members adjourned to discuss the matter in private.
13. On resuming the Second CMD, the Legal Member (as chair) confirmed that the application for a further postponement of the case was refused and that the case would continue to be heard as scheduled.
14. In reaching this decision, the Tribunal Members:
 - a. noted that:
 - i. the Respondent confirmed that he had first sought legal advice from Citizens Advice Scotland in June 2022, at which time he was told not to leave the Property without an eviction order having been granted (that timing being supported by WhatsApp messages from the Respondent provided as part of the Applicants' Productions), and that he had also been in contact with South Lanarkshire Council at around the same time; and
 - ii. he had confirmed at the First CMD that he had sought legal advice (see paragraph 12 of the notes of the First CMD).

- b. noted the following part of the “Outcome” from the notes of the First CMD and which was also made clear to the Respondent orally during the First CMD:

“Notwithstanding that the Respondent had received the notification of the CMD from the Tribunal on 31 August 2022, the Tribunal decided that it was in the interests of justice to allow the Respondent’s application to postpone the consideration of this case. The Tribunal noted that this was a one-time postponement and that, if the Respondent wished to engage legal representation, he needed to have that in place before, and available to represent him at, the next scheduled case management discussion.”

- c. noted that the Tribunal had not been contacted in advance of the Second CMD by any legal representative stating that they had been appointed to act on behalf of the Respondent, it being usual and good practice for any appointed legal representative to do so; in addition, if a legal representative had been appointed, the Tribunal Members would have expected the legal representative to have contacted the Tribunal if a request for a further postponement was to be made.
- d. noted that the Respondent had not contacted the Tribunal in advance of the Second CMD to request a further postponement.
- e. noted that it was alleged that there were arrears of 14 months’ rent, amounting to £15,400.
- f. on balance, did not consider that it was in the interests of justice to grant a further postponement of the case.

Amendment of sum claimed

- 15. The Tribunal Members allowed the amendment of the sum claimed to £15,400.

Proceedings

- 16. The Applicants’ Representative confirmed that the updated rent statement produced by the Applicants up to and including the rent due up to and as at 28 December 2022 was accurate, showing 14 months of rent arrears, and that no payment had been made by the Respondent since before 28 November 2021.
- 17. The Respondent accepted that he had not paid rent since before 28 November 2021 and that there were arrears of rent of £15,400, which included the amount payable as at 28 December 2022 for January 2023.
- 18. When asked about the oral submissions made at the First CMD (see paragraph 11 of the notes of the First CMD) with regard to an alleged agreement with the Applicants regarding expenditure on the Property and remaining in the Property on a long-term basis, the Respondent stated (in summary):

- a. his business had failed towards the end of 2021 and he was in a poor financial position;
 - b. he was in a car accident in March 2022 and his mother had died;
 - c. he “got the kids” in June 2022, now had them full time (which had allowed them to stay in the same school) and wanted a stable home for them – they go to their mother in Fife every 2nd weekend but her property is not big enough for them full time;
 - d. he was focused on getting back to full physical and mental fitness and now had secured employment to start next month;
 - e. he had been a tenant for a number of years and had always paid his rent in the past; and
 - f. he had spent over £9,500 on floor coverings, carpets and professional painting.
19. The Respondent indicated that he could provide evidence of various of these matters but accepted that he had failed to do so as at the date of the Second CMD.
20. The Applicants’ Representative stated (in summary) that:
- a. there was no agreement for the Respondent to do works nor that the Applicants would not sell the Property until 2025. She noted that, even if there had been such an agreement (which there was not), circumstances had changed in that there were substantial arrears of rent, the roof of the Property needed to be substantially repaired/replaced (which the Applicants could not afford to do) and the Applicants intended to sell because they had required to buy a home in the United States of America in 2021 (having moved there in 2015) after their landlord decided to sell and they could not afford to continue to pay a mortgage on their Scottish property as well nor carry out substantial repairs.
 - b. the Applicants had not received any payment of rent since early November 2021 and there was a significant amount outstanding.
21. The Respondent stated that he was speaking with Money Matters and that they would assist with his “current income status”. He indicated that he was interested in making a payment arrangement to pay what he owed over 24 months, which would be affordable now that he had a new contract of employment, with salary of £75,000, opportunity for a bonus and a vehicle.
22. The Applicants’ Representative stated that the Respondent had made numerous promises to pay the rent over a number of months but had failed to do so and that the Applicants had no confidence that the Respondent would pay and no evidence of any new contract of employment or salary had been provided. They needed the protection of an order for payment.

Findings in fact

23. The rent payable under the tenancy agreement (with a start date of 1 September 2018) was stated to be at the rate of £1,125 per month but it appeared to have been varied (at the very least informally, based on the amounts recorded in the updated rent statement as being due and the amounts noted therein as having been paid) by both the Applicants and the Respondent such that the rent was payable at the rate of £1,100 per month. Mr Somerville confirmed in his written submissions that the agreed rent was £1,100 per month.
24. The Tribunal Members were satisfied, on the balance of probabilities, that the aggregate amount of £15,400 was due by way of rent in respect of the rent due as at the 28th of each month for each of the 14 months from 28 November 2021 to 28 December 2022.
25. The Tribunal Members were not satisfied, on the balance of probabilities, that there was any agreement between the Applicants and the Respondent that works should be carried out by the Respondent at the cost of the Applicants and that that cost would be deductible from the rent payable, nor that any “long-term” security of tenure had been agreed.

Reasons for decision

26. The Respondent accepted that he had not paid any rent since early November 2021 and that the amount of unpaid rent was £15,400.
27. Despite having opportunities to do so, the Respondent had failed (including the failure to comply with the direction of the Tribunal issued after the First CMD) to provide any evidence that there had been any agreement with the Applicants that they had instructed him to carry out works at their cost (other than as noted in the following paragraph) or that any such works had, in fact, been carried out, or that the Applicants had agreed that such costs (if there were any) would be deductible from the rent.
28. The Tribunal Members noted that:
 - a. An invoice from Abbotsford contracts in respect of a “contribution to floor coverings” in the amount of £1,100 and with a note on it stating “offset against rental” had been provided as part of the Applicants’ Productions and that there was a £1,100 deduction for those costs from the rent payable as at 28 November 2020;
 - b. An invoice from Currys in respect of a new dishwasher and tumble dryer in the amount of £499.98 had been provided as part of the Applicants’ Productions and that there was a £500 deduction for those costs from the rent payable as at 28 April 2021; and

c. There were various WhatsApp messages (provided as part of the Applicants' Productions) from Mr Somerville to the Respondent chasing the Respondent for the invoices.

29. The Tribunal Members noted that there did not appear to be any suggestion in the WhatsApp messages from the Respondent (provided as part of the Applicants' Productions) that any of the rent payable from and after 28 November 2021 was not payable, nor that there was any agreement between the parties that it was not (or would not be) payable.

30. Accordingly, the Tribunal Members found, on the balance of probabilities, that £15,400 was due and payable by the Respondent to the Applicants.

Decision

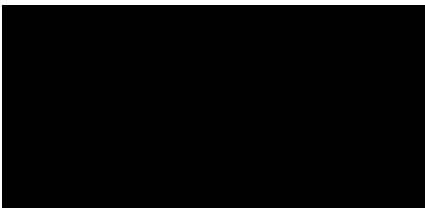
31. The Tribunal granted an order for payment in the amount of £15,400.

32. The decision was intimated orally to the parties at the Second CMD.

Right of Appeal

In terms of Section 46 of the Tribunals (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.

Date: 18 January 2023



APPENDIX – NOTES OF FIRST CASE MANAGEMENT DISCUSSION

Notes of case management discussion of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”)

Chamber Ref: **FTS/HPC/CV/22/2237**

Re: **4 Abbotsford Avenue, Rutherglen, Glasgow, G73 3NX**
(“the Property”)

Parties:

Mr Steven Somerville and Mrs Vivienne Somerville, 768 Thornapple Drive, Naperville, Illinois, 60540-6314, United States
(“the Applicants”)

Mr Steven Corbett, 4 Abbotsford Avenue, Rutherglen, G73 3NX
(“the Respondent”)

Tribunal Members:

Pamela Woodman (Legal Member) and Frances Wood (Ordinary Member)

Present:

The case management discussion in relation to case reference FTS/HPC/CV/22/2237 took place at 2pm on Friday 14 October 2022 by teleconference call (“**the CMD**”). The Applicants were not present at the CMD but were represented by Mrs Lorna Turner (“**Applicants’ Representative**”) of Leonards Solicitors Limited. The Respondent was present at the CMD. The clerk to the Tribunal was Michael Cowie. This case was conjoined with case reference FTS/HPC/EV/22/2236 and heard at the same time.

BACKGROUND

1. The Applicant made an application to the Tribunal under section 71(1) of the 2016 Act and in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended. More specifically, the application was made in terms of rule 111 (*Application for civil proceedings in relation to a private residential tenancy*) of the HPC Rules.
2. The order sought from the Tribunal was a payment order against the Respondent in respect of the Property.

3. The application was dated 30 June 2022 (but sent under cover of a letter dated 5 July 2022 and received by the Tribunal on 6 July 2022) and was accompanied by copies of the following:
 - a. Private residential tenancy agreement between the Applicants and the Respondent dated 30 October 2018 (“**Tenancy Agreement**”);
 - b. Letter from Slater Hogg & Howison dated 23 March 2022 confirming that it had been instructed to market the Property;
 - c. Notice to leave addressed to the Respondent at the Property issued by the Applicants’ Representatives dated 1 April 2022 (“**Notice to Leave**”) stating that:
 - i. the eviction ground being used was “Your Landlord intends to sell the Let Property” with attached copy of the letter from Slater Hogg & Howison dated 23 March 2022; and
 - ii. an application would not be submitted to the Tribunal before 29 June 2022;
 - d. Post Office Ltd certificate of posting and tracking report stating that the item was delivered on 2 April 2022 at 12:10; and
 - e. “Landlord Statement” covering the period from 1 September 2018 to 28 June 2022, which indicated that no rent had been paid since 1 November 2021 but failed to state any amount of arrears.
4. A notice of acceptance of the application was issued dated 8 August 2022 under rule 9 of the HPC Rules, which confirmed that the application paperwork had been received by the Tribunal between 6 and 12 July 2022.
5. The Tribunal had received a copy of the certificate of intimation issued by Andrew McLean (sheriff officer) of Walker Love which confirmed that the letters (in respect of the cases with references FTS/HPC/EV/22/2236 and FTS/HPC/CV/22/2037) with enclosures from the Tribunal had been served on the Respondent on 31 August 2022 by depositing the letter within the letterbox of the Property. This letter notified the Respondent of the date and time of the CMD and requested written representations by 20 September 2022 among other things.
6. The Respondent had been invited to provide written representations by 20 September 2022 but had not done so.
7. The Applicants’ Representatives had applied (in terms of rule 14A of the HPC Rules) by e-mail on 9 September 2022 to amend the sum claimed from £8,800 to £11,000.
8. The Applicant’s Representative and the Respondent respectively confirmed that they held (or had received) copies of the documents referred to in the paragraphs

above, except that the sheriff officers' certificate of intimation had only been provided to the Tribunal Members.

9. The Tribunal noted that the Applicants were the registered landlords of the Property.
10. The Tribunal also noted that the Applicants were the registered proprietors of the Property (title number LAN6733).

Summary of discussion

11. The Respondent confirmed that he opposed the application for a payment order as he disputed the amount sought was due. He indicated that he had a verbal agreement with Mr Somerville of the Applicants to upgrade the Property. He stated that he had spent around £10,000 on it in 2021 and had an expectation of being allowed to remain in the Property on a long-term basis, potentially until the Applicants' mortgage expired. He indicated that he may have WhatsApp messages relating to this. He contended that his upgrading work had added value to the Property which was 'immaculate'.
12. The Respondent requested a postponement in order to allow him to obtain legal representation. He noted that he had contacted Citizens Advice in around mid-September but they were unable to help and so he contacted another law firm on the Monday immediately before the CMD, who called him back on the Tuesday, and suggested that he request a postponement in order to allow them to represent him.
13. The Respondent explained that he had lost his business in late 2021 and, in 2022, had been involved in a car accident and lost a parent. In light of all of this, he acknowledged that he was suffering with his mental health and had "buried his head in the sand".
14. The Applicant's Representative opposed the application for a postponement on the basis that the Respondent had had an opportunity to seek advice at an earlier stage.

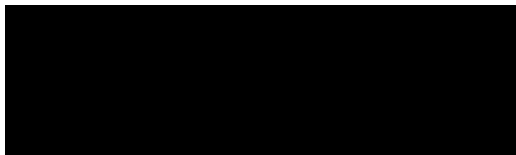
OUTCOME

Notwithstanding that the Respondent had received the notification of the CMD from the Tribunal on 31 August 2022, the Tribunal decided that it was in the interests of justice to allow the Respondent's application to postpone the consideration of this case. The Tribunal noted that this was a one-time postponement and that, if the Respondent wished to engage legal representation, he needed to have that in place before, and available to represent him at, the next scheduled case management discussion.

Accordingly, the Tribunal referred the case to a further case management discussion.

The Tribunal issued directions to confirm the further submissions and information required from each of the parties, including with regard to any dates of non-availability in December 2022 and January 2023.

NOTE: This document is not confidential and will be made available to other First-tier Tribunal for Scotland (Housing and Property Chamber) staff, as well as issued to tribunal members in relation to any future proceedings on unresolved issues.



Chair

14 October 2022

Date