



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/21/0987

Re: Property at 29 Fleet Avenue, Renfrew, PA4 0YT (“the Property”)

Parties:

Mr Thomas Gordon Blair McDonald, 54 Mount Pleasant Crescent, Milton of Campsie, Glasgow, G66 8EG (“the Applicant”)

Mr Iain Workman, 29 Fleet Avenue, Renfrew, PA4 0YT (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order for the amount of £13,050.00 by the Respondent to the Applicant should be granted.

Background and Case Management Discussion

1. The application for an order for payment of rent arrears under S 71 of the Private Housing (Tenancies) (Scotland) Act 2016 arising from a Private Residential Tenancy Agreement between the parties was made by the Applicant's representatives Miller Beckett and Jackson Solicitors on 23 April 2021.
2. The following documents were lodged to support the application:
 - a. Copy tenancy agreement
 - b. Record of rent arrears from 8 January 2019 to 8 March 2021
3. The application was originally for a payment order in the sum £12,150.00 and indicated as the Rule applicable Rule 111 of the Procedural Rules.
4. On 19 May 2021 the Respondent Sheriff Officers served the case papers and the notification for the Case Management Discussion (CMD) on 21 June 2021 on the

Respondent. The Tribunal was satisfied that the Respondent had the required notice of the CMD as set out in Rules 17 (2) and 24 (2) of the Procedural Rules.

5. No representations from the Respondent were received by the Tribunal.
6. By correspondence of 10 June 2021 the Applicant's representatives moved for an amendment of the sum outstanding to £13,050.00 and submitted an up to date rent statement for the period up to and including 8 May 2021. This was sent to the Respondent.
7. The CMD took place on 21 June 2021 by telephone conference call.
8. The Applicant's solicitor Mr Hanif participated on behalf of the Applicant. The Respondent participated. .
9. The Applicant's solicitor moved for a payment order for the amended amount.
10. The Respondent stated that he agreed that rent arrears of £13,050.00 were currently outstanding. He stated he had not been in possession of the Applicant's address or contact details as he could not find his lease and his bank account had been closed. He stated when the papers for the CMD were served he was in bed with Covid. He has now started working again and would offer payments of the rent and an additional £200 per month to clear the arrears. He had not completed the time to pay direction form as he did not understand what that was and had not really read the papers he had been served with. He stated his Universal Credit, which he received for some of the time, had not been enough to pay the rent. He wishes to resolve the matter. He is sorry he accumulated such an amount of arrears.

Findings in Fact:

1. The property was let on a Private Residential Tenancy Agreement commencing on 8 October 2018
2. The parties are the landlord and tenant of said Tenancy Agreement.
3. The tenancy is ongoing.
4. The monthly rent for the property is £450 payable in advance on the 8th day of the month.
5. The Respondent did not pay any rent from 8 January 2019 onwards.
6. Rent arrears of £13,050 accrued as per the Rent Statement up to 8 May 2021 and remain outstanding.

Reasons for Decision:

1. The Tribunal considered that the material facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

(d) discussing what witnesses, documents and other evidence will be required;

(e) discussing whether or not a hearing is required; and

(f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

2. However, in terms of Rule 18 of the Rules of Procedure:

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

3. The documents lodged are referred to for their terms and held to be incorporated herein.

4. The Tribunal did not consider that there was any need for a hearing as there had been no defence by the Respondent and the application had not been opposed.

5. The Tribunal makes the decision on the basis of the documents lodged by the Applicant and his solicitor and the information given at CMD by both parties.

6. The Respondent had fair notice of the representations of the Applicant forming the reasons for the application and has not challenged these. Although the amendment to the sum sought had been made 11 days rather than 14 days prior to the CMD in terms of Rule 14A, the Tribunal considered that the amendment can be allowed in terms of Rule 13, there having been no new points raised and the Respondent having been aware of the change in the outstanding arrears and agreeing the amount outstanding for that period in any event.

7. The Tribunal is thus satisfied that the Respondent had entered into a Private Residential Tenancy Agreement with the Applicant for the property with a monthly rental charge of £450 and had failed to pay rent from 8 January 2019 onwards. The start of non payment of rent was well before the Covid -19 pandemic started. The Tribunal is further satisfied that the rent arrears are as set out in the Rent Statement provided in the email of 10 June 2021. The Respondent had not put forward any reason why the rent should not be due.

8. The Tribunal considered that even if the Respondent had not been able to find a copy of his tenancy agreement to contact the Applicant in the past, the Respondent had been able to arrange payment and contact the Applicant at the latest since the papers were served on the Respondent in May 2021 because the papers included the contact details for the Applicant and the Applicant's legal

representative. The Respondent did not use that opportunity to deal with the arrears. The Respondent had been provided with the opportunity to lodge a time to pay direction application. He had not done so. He admitted that he had not paid any rent since 8 January 2019 although at least for some period during that time he had been in receipt of benefits and although he was now in employment.

9. Although the Respondent at the CMD made an offer of payment at the rate of £200 per month towards the arrears, the Tribunal would not be able to grant a time to pay direction for that payment as the repayment of the arrears at that rate would exceed the 2 year period for repayment considered reasonable for such a direction. It will be a matter between the parties whether the Applicant will accept a payment plan.

10. The Applicant is entitled to a payment order for the sum of £13,050.00 for the rent arrears due up to and including the rent due on 8 May 2021 as claimed in the amended application.

Decision:

The Tribunal grants the order for payment of the amount of £13,050.00 by the Respondent to the Applicant

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.

**Petra Hennig McFatrige
Legal Member/Chair**

**21 June 2021
Date**