

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section Section 71 (1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/21/1046

Re: Property at 15 Wellhead Court, Lanark, ML11 7DY (“the Property”)

Parties:

HMR Legacy Ltd, Olivebank Road, Musselburgh, EH21 6RD (“the Applicant”)

Ms Ashley Reilly, 15 Wellhead Court, Lanark, ML11 7DY (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatrige (Legal Member) and Leslie Forrest (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 for the amount of £ 1,540.29 by the Respondent to the Applicant should be granted, together with interest at the rate of 3% per annum from the date of the decision. The decision was unanimous.

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 (the Act) arising from a Private Residential Tenancy Agreement between the parties was made by the Applicant's representatives T C Young on 4 May 2021.
2. The following documents were lodged to support the application:
 - a. Copy Private Residential Tenancy (PRT) commencing 29 November 2019 for the property
 - b. Rent Statement 26.11.2019 to 11.4.2021
 - c. Updated rent statement 26.11.2019 to 11.6.2021

3. The application was originally for a payment order in the sum £1,617.08 and indicated as the Rule applicable Rule 111 of the Procedural Rules.
4. On 1 June 2021 the Respondent was served by Sheriff Officers with the case papers and the notification for the Case Management Discussion (CMD) on 6 July 2021. 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 16 June 2021 the Applicant's representatives moved for an amendment of the sum outstanding to £1,540.29 and submitted an up to date rent statement for the period up to and including 11 June 2021, which had also been sent to the Respondent by recorded delivery letter dated 16 June 2021.
7. The CMD took place on 6 July 2021 by telephone conference call.
8. The Applicant's property manager Ms Kirsty Campbell participated together with her solicitor Ms Caldwell, the Respondent did not participate.
9. Ms Campbell confirmed that the last contact with the Respondent was at an inspection attempt by the Applicant on 21 June 2021 when the Respondent was reminded to participate in the CMD but avoided to speak about the rent arrears situation.
10. Ms Campbell explained that the tenancy started because the Respondent's sister was another tenant of the Applicant and had to move urgently from her previous accommodation. The Applicant agreed to a low deposit payment in light of the urgency. The Respondent had advised that Universal Credit (UC) payments would be made for the rent and these would then be paid to the Applicant. The arrears developed as per the schedule. The UC payments for 3 months early in the tenancy were retained by the Respondent without agreement by the Applicant and the Applicant had to then apply directly to UC for direct payments of the rent and arrears on behalf of the Respondent. These payments had started in July 2020 but the UC payments towards the arrears were small and varied and it is clear that these will stop when the tenancy ends. The relationship with the Respondent had broken down as the Respondent was simply not at all engaging in any attempt to resolve the issue and had also on several occasions refused entry for inspections of the property. The Respondent had at one point stated to Ms Campbell that she was simply burying her head in the sand. Ms Campbell had written several letters by email to try and work things out, give all the relevant information, had engaged the mediation service of SDS, which the Respondent also did not ultimately participate in.
11. Ms Caldwell confirmed that the arrears had been accruing continuously since 11 February 2020 as shown on the rent statement to 11 June 2021. The arrears at the CMD are £1,540.29. She confirmed that there was no interest provision in the PRT but that the Tribunal has the power to award interest at a reasonable rate. The Respondent had not engaged in the process of addressing the rent arrears, had blocked the Applicant's telephone number on her telephone and had not communicated at all about the situation. The Applicant had tried to engage the Respondent in resolving the matter and had received a hostile reaction when trying to discuss this. Ms Caldwell moved for a payment order for the outstanding amount of £1,540.29 as per the amendment request, together with interest in terms of Rule 41A of the Procedural Rules.

Findings in Fact:

1. The property was let on a Private Residential Tenancy Agreement commencing on 26 November 2019.
2. The parties are the landlord and tenant of said Tenancy Agreement.
3. The tenancy is ongoing and the Respondent still occupies the property with her two children aged 6 and 13.
4. The monthly rent of £475 is payable on the 11th day of the month in advance.
5. Rent arrears accrued as per the Rent Statement up to 11 June 2021, there has been no change since.
6. The monthly rent for the property is £475.
7. The Respondent is in receipt of Universal Credit but had retained 3 payments and not used them for the purpose of payment of rent between February and April 2020.
8. Universal Credit payments towards the arrears have been made as per the rent statement but are dependent on the availability of additional funds from month to month.
9. The Respondent has refused to engage in resolving the issue of rent arrears consistently and has not engaged with the numerous attempts of the Applicant to address the issue.
10. The arrears of rent due as at the CMD are £1,540.29

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 representations from 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 her solicitor and the information given at CMD.

6. The Respondent had fair notice of the representations of the Applicant forming the reasons for the application and has not challenged these. As no representations were received from the Respondent by the Tribunal, the facts of the case are not in dispute. This includes the rental statement up to 11 June 2021.

7. The Tribunal was satisfied that the Applicant's Representative had followed the correct amendment process in terms of Rule 14A of the Procedural Rules and that the application was thus amended to the amount of £1,540.29 still outstanding as at 6 July 2021.

8. 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 £475 as stated in clause 7 of the PRT and a start date of 26 November 2019 as stated in clause 5 of the PRT. The Tribunal is further satisfied that the rent arrears are as set out in the Rent Statement to 11 June 2021.

9. The Applicant is entitled to a payment order for the sum of £1,540.29 for the rent arrears for the rental due up to and including 6 July 2021 as claimed in the amended application for rent arrears accrued under the tenancy agreement to that date.

10. There are no provisions for interest payments on rent arrears in the PRT. However, in terms of Rule 41 A of the Procedural Rules

"Interest on orders for payment

41A.—(1) The First-tier Tribunal may include interest when making an order for payment.

(2) Where paragraph (1) applies, the interest is to be at the rate either—

(a) stated in the relevant tenancy agreement, or

(b) ordered by the First-tier Tribunal,

and running from the date of the decision of the First-tier Tribunal."

the Tribunal considers that in this case interest on the outstanding amount should be paid at the rate of 3 % per annum, in particular because the Respondent had

retained funds paid to her by UC for the purpose of payment of her rent, which she did not pass on to the Applicant. The funds were available but it was her decision not to use them for the intended purpose. Essentially she "borrowed" these funds from the landlord without the landlord's consent and thus the Tribunal considered it reasonable in all the circumstances that the Respondent should thus pay appropriate interest on the shortfall of rent.

Decision:

The Tribunal grants the order for payment of the amount of £1,540.29 by the Respondent to the Applicant together with interest at the rate of 3% per annum from the date of the decision on 6 July 2021.

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.

P Hennig-McFatrige

Legal Member/Chair

6 July 2021

Date
