



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

Chamber Ref: FTS/HPC/CV/21/2094

Re: Property at 78 Double Hedges Park, Edinburgh, EH16 6YN (“the Property”)

Parties:

Kathleen Brydon Richardson, 59 Buckstone Loan, Edinburgh, EH10 6UJ (“the Applicant”)

Margaret Harrop, 78 Double Hedges Park, Edinburgh, EH16 6YN (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a Payment Order be granted against the Respondent in the sum of Seven Thousand Seven Hundred and Twenty Five Pounds (£7,725)

Introduction

This is an application under Rule 111 and Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016.

Service of the application and intimation of the Case Management Discussion (CMD) was made upon the respondent by sheriff officer delivery on 19 October 2021.

An initial CMD took place by teleconference at 10.00 am on 25 November 2021. The respondent participated. Consideration of the application was adjourned then as the respondent had made a time to pay application late and the applicant’s representative required time to take instructions upon it.

The further CMD took place by teleconference at 10.00am on 25 January 2022. The applicant was represented by Mr Scott Runciman, solicitor of Messrs Gilson Gray LLP. The respondent failed to participate at the hearing. There was no known barrier to her doing so.

Findings and reasons

The property is 78 Double Hedges Park, Edinburgh EH16 6YN.

The applicant is Ms Kathleen Brydon Richardson. She is the heritable proprietor of the property and the landlord. The respondent is Ms Margaret Harrop. She is the tenant.

The parties entered into a private residential tenancy which commenced on 12 April 2019. A copy of the lease has been produced. At the commencement of the lease the monthly rent was £650 per calendar month. On 1 May 2020, the rent was increased to £665 per calendar month. A Rent Increase Notice under s22 of the 2016 Act has been produced.

The respondent has fallen into arrears of the contractual rental payments. The application is supported by detailed rent statements disclosing the sums which are outstanding.

The Tribunal found all the unchallenged documentary evidence produced credible and reliable and attached weight to it.

As at the date of application the respondent's rent arrears were £4,121.13. An amendment application under Rule 14A increasing the sum sought was intimated to the Tribunal on 2 November 2021 prior to the CMD which took place on 25 November 2021. The total sum sought then was increased to £5,065, reflecting additional rent due. A further Rule 14A amendment application was made on 7 January 2022 reflecting the rent arrears which had by then risen to a level of £7,725 which corresponds to the sums outstanding on the updated rent statement produced.

The applicant is entitled to recover rent lawfully due under and in terms of the lease. No interest is sought by the applicant in this application.

A Time to Pay application has been made by the respondent. This was submitted at the time that the sum sought by way of recovery was at the level of £5,065. The offer made by the respondent was to pay at a rate of £135 per month.

At the CMD on 25 November 2021 the Tribunal made the respondent aware that one factor to be taken into account at the next hearing would be the issue of her compliance with ongoing rental payments and commitment to the arrears payments now offered. She has not adhered to those commitments.

On 3 December 2021 the applicant's representative advised that the offer made by the respondent was acceptable after discussions which had taken place directly

between the parties. However given the respondent's continued failure to pay rent or commence payments towards the arrears as she undertook to do the applicant's representative opposed the making of a time to pay direction.

The sum now outstanding is £7,725. At this rate the sum would take almost 5 years to pay off.

In terms of the Debtors (Scotland) Act 1987 (amended by the First-tier Tribunal for Scotland Housing Property Chamber (Incidental Provisions) Regulations 2019), the Tribunal will make a time to pay direction if satisfied that it is reasonable in the circumstances to do so.

The Tribunal finds that it would be unreasonable to expect the applicant to wait almost 5 years for the respondent to pay the sums due by her in such an instalment arrangement as proposed where there has been no evidence of a willingness to comply. The respondent's offer made under the time to pay application is not reasonable.

The Tribunal understands and appreciates the respondent's precarious financial position, but having concluded that it was unreasonable in all of the circumstances to award such an instalment rate sought by the respondent, the Tribunal refused the time to pay direction application and proceeded to make an order for payment in the full sum against the respondent.

Note

In the context of the most recent amendment application made on behalf of the applicant an attempt was made to amend the nature of the case as well as the amount sought to be recovered by way of rent arrears. Reference was made to Clause 37 in the private residential tenancy agreement in which there is provision for the applicant being entitled to recover all expenses in respect of pursuing debts which arise.

That proposed amendment – which sought a further £750 - is governed by Rule 14 not Rule 14A and can only be made with the consent of the tribunal. It is a 'new matter' not initially raised.

A contract term may be unfair if it has the object or effect of requiring any consumer who fails to fulfil his or her obligations to pay a disproportionality high sum by way of penalty.

By way of analogy, expenses under Rule 40 can only be awarded by the Tribunal where the behaviour of the party against whom expenses are sought is unreasonable in the course of the proceedings.

The expense incurred by a commercial landlord in pursuing matters such as rent arrears may be considered to be the usual expected and foreseeable business expenses which would form a business expense and be tax deductible.

The Tribunal raised its concerns about the proposed amendment. After discussion the applicant's representative withdrew that part of the proposed claim.

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.

R Mill

25 January 2022

Legal Member/Chair

Date