



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/CV/21/2682

Re: Property at 9 Dunbar Avenue, Stenhousemuir, Larbert, FK5 4TG (“the Property”)

Parties:

Mr David Mackay, Miss Tracy Grant, 2 Dunvegan Avenue, Stenhousemuir, Larbert, FK5 4TF (“the Applicant”)

Miss Karen Forsyth, 14 Seabegs Crescent, Bonnybridge, FK4 2DB (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment to the Applicant in the sum of £2,500 should be made against the Respondent.

Background

1. By application dated submitted on 29 October 2021, as amended to increase the sum claimed from £1,500 to £3,000, the Applicant sought a payment order against the Respondent in respect of rent arrears. Supporting documentation including copy Tenancy Agreement and Rent Statement were submitted in support of the application.
2. Following initial procedure and submission of supporting documentation, the application was accepted by the Tribunal by Notice of Acceptance dated 18 January 2022, in terms of Rule 9 of the Regulations, and duly served on the Respondent by Sheriff Officer on 16 February 2022. Initial written

representations were lodged by the Respondent on 7 March 2022 and were responded to by the Applicant on 10 March 2022. Further representations were submitted by both parties prior to the Case Management Discussion (“CMD”).

3. A CMD took place on 28 March 2022 at 2pm with the Legal Member of the Tribunal. The CMD was attended only by the Applicant, Ms Tracy Grant. A detailed Note on the CMD and a Direction, both dated 28 March 2022, were issued to parties after the CMD. An Evidential Hearing was thereafter fixed to take place on 30 May 2022 at 10am. The Tribunal Members had regard to the terms of both the CMD Note and the Direction prior to the Evidential Hearing. It was noted that the CMD Note makes reference to the CMD having taken place at 10am. This is a typographical error and should state 2pm.
4. The Direction required both parties to intimate the details of any witnesses they intended to call at the Evidential Hearing and to lodge any further documents they intended to rely upon at the Evidential Hearing at least 14 days prior to the Evidential Hearing. The Direction also required the Respondent to clarify her position in respect of the claim for payment of the rent arrears. The Respondent did not comply with that latter part of the Direction, although she did intimate the name of a witness she intended to call at the Evidential Hearing and submit some further written representations regarding the wider dispute between the parties prior to the Evidential Hearing. The Applicant did not lodge any further documentation prior to the Evidential Hearing, nor intimate details of any witnesses.
5. On 27 May 2022 (Friday prior to Evidential Hearing on Monday), the Tribunal Members received notification by email from the Respondent which had been submitted in the early hours of the morning the day before, advising that, due to unforeseen circumstances, she would not be able to attend the Evidential Hearing. The Tribunal responded to state that, as the Respondent had not specifically requested a postponement of the Evidential Hearing, the intention was to proceed with the Evidential Hearing in the absence of the Respondent. These communications were also notified to the Applicant. The Respondent emailed in response to state that she was attending a family funeral at the same time as the Evidential Hearing, is not fit to attend and has a doctor’s line. The doctor’s line was not submitted and, again, there was no specific request from the Respondent for a postponement. A further response to this effect was issued by the Tribunal Administration to the Respondent early on the morning of 30 May 2022 (8.43am) but no further communication was received prior to the Evidential Hearing at 10am.

The Hearing

6. The Evidential Hearing took place by telephone conference call on 30 May 2022, commencing just after 10am to allow parties an opportunity to join the call. The Tribunal Members introduced themselves. Only the Applicant, Ms Tracy Grant attended. She confirmed that she would be presenting the case for the Applicant but that the other Applicant, Mr David Mackay, was also available if the Tribunal needed to hear from him.

7. The Legal Member made some introductory remarks, referred to the previous CMD and explained the purpose of today's Evidential Hearing. As a preliminary matter, the Legal Member verified that the Applicant had been notified of the recent email communications regarding the Respondent intimating that she would be unable to attend the Evidential Hearing and sought the Applicant's position as to whether the Applicant wished the Evidential Hearing to proceed today. Ms Grant confirmed that she did. The Legal Member explained that, in the circumstances, and in the absence of anything further having been submitted by the Respondent, the Tribunal was intending to proceed with the Evidential Hearing in the absence of the Respondent. It was explained, however, that the Tribunal would still be having regard to all the written representations lodged by the Respondent.

8. Ms Grant then gave evidence in support of the application and answered a number of questions from both Members of the Tribunal. Ms Grant confirmed that the sum sought is £3,000 and that this represents rent due for the months August 2021 to January 2022 inclusive, namely 6 months' rent at the rate of £500 per month. She confirmed that this tenancy commenced on 1 September 2020 and that, although a Notice to Leave was served in 2021, the Respondent stayed on for a full further 6 months before vacating during January 2022. No rent was paid during that 6 month period and Ms Grant confirmed that nothing further has been paid since. Nor have any payment proposals been received from the Respondent. Ms Grant advised that they were not given any explanation for the rent not being paid, although they did receive a text message from the Respondent's partner who lived with her, stating that no more rent would be paid. The Applicant thinks this was in response to their relations breaking down and the Notice to Leave being served. She advised that they received no communication from the Respondent stating that the rent was not being paid due to repairs issues at the Property. Ms Grant stated that the Respondent did ask for the tenancy deposit back when the Notice to Leave was served but that the Applicant refused and explained that this was not how it worked and that the deposit could only be claimed when the Respondent was vacating the Property. Ms Grant also explained the background to the tenancy, in that the Respondent had actually been their tenant for longer, but that the original tenancy was through a family company, "Lindmac". The family does not get on and that this led to the Applicant taking over the management of the tenancy themselves and the fresh Tenancy Agreement being entered into with the Respondent. Ms Grant confirmed that a further tenancy deposit was not taken by the Applicant at that time and that they regarded the original tenancy deposit of £500 which had been paid previously by the Respondent as 'carrying over' to the new tenancy. She does not consider that the Respondent was due this back, as there were cleaning costs and other issues found when the Respondent eventually vacated the Property. Ms Grant confirmed that the deposit of £500 would have been paid to the company, Lindmac, who would have been responsible for putting it into a tenancy deposit scheme. Ms Grant stated that she and Mr Mackay did not get the £500 back from Lindmac and because of the family background there, would not intend contacting Lindmac about this.

9. Although their relations with the Respondent were previously good, Ms Grant advised that, during 2021, problems arose. They started getting complaints from other people about antisocial behaviour at the Property. The Respondent began sending all sorts of messages to the Applicant and then some allegations were made about Mr Mackay which led to the Applicant deciding that they would not have anything more to do with the Respondent or her partner and that Mr Mackay would not attend at the Property any more. The Notice to Leave was served and communications between them stopped.
10. As to the repairs issues mentioned by the Respondent in her written representations, the Applicant's position is that these issues were only raised as a consequence of the Notice to Leave being served. Ms Grant explained that, after taking over management of the Property, they did carry out some repairs at the request of the Respondent, including the replacement of a hall carpet, a garden fence and the front door. She confirmed that the replacement front door was second-hand and that some plastering work was required around the door to finish it off properly but that this did not happen as relations had by then broken down with the Respondent to such an extent. The Applicant does not agree that other repairs issues raised by the Respondent were justified, such as the allegation about faulty plug sockets in the kitchen or the bathroom tiles. Ms Grant confirmed that they have had the Property back for some months and that there were no other obvious defects found. They have not, for example, required to have any electrical work carried out to the Property. Ms Grant confirmed that they have no intention of re-letting the Property and instead intend to sell it. She reiterated that they consider that these other repairs matters raised by the Respondent are not genuine and were only brought up in response to the Notice to Leave being served. Ms Grant stated that the whole situation has been going on a long time and has been very stressful.
11. Having heard Ms Grant's evidence, the Tribunal did not consider it necessary to hear evidence from the other Applicant, Mr David Mackay.

Findings in Fact

1. The Applicant is the owner and former landlord of the Property.
2. The Respondent was the tenant of the Property by virtue of a Private Residential Tenancy commencing 1 September 2020.
3. The Respondent vacated the Property during January 2022.
4. The rent in terms of the tenancy was £500 per calendar month, payable in advance.
5. The rental payments due for the months August 2021 to January 2022 inclusive, amounting to £3,000 in total, have not been paid by the Respondent and remain outstanding.

6. The Respondent has not made any further payments to the Applicant, nor made payment proposals or sought time to pay.
7. A tenancy deposit of £500 was paid by the Respondent at the commencement of her original let of the Property from a third party, namely a family company which managed the Property on behalf of the Applicant.
8. The Applicant did not take a further tenancy deposit from the Respondent at the commencement of this tenancy, regarding the original deposit as transferring over to this tenancy.
9. The Applicant has not received the tenancy deposit from the third party.
10. The sum of £2,500 is due and resting owing by the Respondent to the Applicant.

Reasons for Decision

1. The Tribunal did not consider that the Respondent had made a request for a postponement of the Evidential Hearing in terms of Rule 28 of the Regulations in advance of the hearing and therefore decided to proceed with the Hearing in the absence of the Respondent in terms of Rule 29.
2. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, the written representations and documentation received from both parties and the oral evidence given at the Hearing on behalf of the Applicant.
3. The Tribunal was satisfied that it had sufficient evidence on which to make its decision in the case and did not require to hear evidence from any additional witnesses nor to require any further documentation to be lodged.
4. The Respondent had not attended either the CMD nor the Evidential Hearing, nor responded to the Direction issued following the CMD in terms of the clarification requested by the Tribunal of the Respondent's position as regards the Applicant's claim for payment of rent arrears amounting to £3,000. The Tribunal noted from the various written representations submitted by the Respondent that she clearly had a number of issues with the Applicant in connection with their management of the tenancy and its termination. This included various repairs issues which the Respondent alleged had not been properly addressed by the Applicant. However, the Tribunal did not consider that there was any evidence before it that indicated that the repairs issues were the reason for the Respondent stopping paying rent nor that the Respondent had been formally withholding rent for that reason or was seeking a formal abatement of rent, either in whole or in part, from the Tribunal. Ms Grant's evidence was that the Respondent had never stated to the Applicant that the reason she stopped paying her rent was due to repairs issues. She made reference to a text message having been received from the Respondent's partner stating that no further rent would be paid and that this was in response to the Notice to Leave having been served. The Tribunal noted that a copy of

said text message from “Ryan” had been submitted to the Tribunal and that it did refer to the notice, stated that no more rent would be paid and made no mention of repairs issues being the reason. The Tribunal was of the view that this supported the Applicant’s position that the Respondent simply stopped paying rent in response to the Notice to Leave having been served. The Tribunal was satisfied that the rent arrears amounted to £3,000 as per the application, having had no indication from the Respondent to the contrary. The Tribunal was similarly satisfied that no payments towards the rent arrears had been made by the Respondent since and that no payment proposals had been made, nor time to pay sought by the Respondent. The Tribunal was, however, of the view that the £500 deposit paid by the Respondent at the outset of her renting this Property should be taken into account, given that it appears still to be held on behalf of the Applicant, albeit that the Applicant may not have ready access to it due to the particular background circumstances of their family dispute. The Tribunal considered that this is not the Respondent’s fault and (whilst making no judgement as to whether or not the Respondent would be entitled to return of all or part of the deposit) that, in the particular circumstances here, it ought to be deducted from the sum claimed by the Applicant who could, potentially, claim this sum from the third party to whom the deposit was originally paid.

5. The Tribunal was therefore satisfied from the information before it that the sum of £2,500 is due and resting owing by the Respondent and that an order for payment in that sum should accordingly be made.
6. The decision of the Tribunal was unanimous.

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.

Nicola Weir

Legal Member/Chair

30 May 2022
Date