



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 (“The Act”)

Chamber Ref: FTS/HPC/CV/21/3002

Re: Property at 29 Cammo Grove, Edinburgh, EH4 8EX (“the Property”)

Parties:

Ms Ann Haley, Jean Young, 34 Queen Margaret Close, Edinburgh, EH10 7EE; West Byre, Cauld barns Farm, Stirling, FK7 8HH (“the Applicant”)

Ms Nicola Fox, 29 Cammo Grove, Edinburgh, EH4 8EX (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) rejected the Respondent’s Time to Pay Application and made a Payment Order against the Respondent in favour of the Applicants in the sum of £6,925.00.

Background

The Applicant seeks a Payment Order for rent arrears said to be lawfully due by the Respondent to the Applicants under a tenancy between the parties.

The Case Management Discussion

The Application called for a Case Management Discussion (CMD) by conference call at 10 am on 5 May 2022. The case called alongside a related Application in respect of an Eviction Order

The Applicants were both present together with their representative Mr Malcolm Brown. The Respondent had emailed the Tribunal on the morning of the CMD to advise:

Dear Savanagh lowrie,

I am due to attend at party case call at 10am this morning. Unfortunately I have had an accident slipping down the stairs and have hurt my right ankle.

I am now waiting on an ambulance to take me to the hospital to see if it is broken. Which means I cannot take part in this call this morning I am afraid.

Kind regards

Nicola Fox

The Tribunal considered whether it would be appropriate to proceed with the CMD in light of this email. The Tribunal noted that there had been a previous CMD on 18 March 2022 in respect of this Application and the Respondent appeared to have failed to comply with the Direction made regarding her previously stated intention of entering into a payment plan. The Tribunal was informed that no further correspondence had been received from the Respondent or efforts made to enter into any sort of payment plan.

The Respondent had submitted a Time to Pay Application that failed to propose any actual payments or suggest any appropriate period for payment.

The Tribunal also noted that the email contained no request for a postponement or even outlined what the Respondent's position might be. The Tribunal unanimously considered that in the whole circumstances of the case, this email provided an insufficient basis for delaying proceedings. The Tribunal decided to proceed in the absence of the Respondent as per Rule 29.

Mr Brown had suggested at the CMD on 18 March 2022 that the Applicants would make an application to amend the sum claimed. Instead the Applicants had simply lodged an updated rent statement but neglected ever to make an application to amend. The Tribunal did not consider that simply submitting an updated rent statement satisfied Rule 14A as no attempt was made to state what the amended sum claimed actually was.

The Tribunal considered that simply emailing over an updated rent statement could not be said to provide the Respondent with fair notice of the precise detail of the Payment Order sought.

Accordingly, the Tribunal considered that the only Payment Order that the Tribunal could competently make was the sum set out in the Application, being £6,925.00.

Having heard from the Applicants, and having considered the Application, the Tribunal made the following findings in fact.

Findings in Fact

- I. *The Parties entered into a tenancy which commenced on 1 March 2019;*
- II. *The Applicants were the landlords and the Respondent was the tenant;*
- III. *The contractual monthly rent under the tenancy was £1,300.00;*
- IV. *The Respondent fell into rent arrears and the sum claimed in the Application of £6,925.00 is lawfully due by the Respondent to the Applicants but remains unpaid;*
- V. *The Respondent's Time to Pay Application fails to make a credible offer for repayment of the sums due.*

Reasons for Decision

Having made the above findings in fact, the Tribunal decided to grant the Application and made a Payment Order in favour of the Applicants against the Respondent in the sum of £6,925.00. The Respondent's Time to Pay Application is rejected.

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.



Legal Member: Andrew McLaughlin

Date: 05/04/2022