

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/CV/21/3180

Re: Property at 39 Peveril Terrace, Edinburgh, EH16 6DE ("the Property")

Parties:

Ms Miriam Al Kashi, 10 Exeter Road, Feltham, TW13 5PE ("the Applicant")

Miss Kelly Gilroy, 39 Peveril Terrace, Edinburgh, EH16 6DE ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member) and Janine Green (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that:

At the Case Management Discussion ("CMD"), which took place by telephone conference on 16 March 2022, the Applicant was in attendance and was represented by Ms K Higgins of Trinity Factors, 209-211 Bruntsfield Place, Edinburgh, EH10 4DH. The Respondent was also present.

Ms R Macdonell of Trinity Factors attended as an observer.

The CMD was in respect of this matter and the related case bearing reference FTS/HPC/EV/21/3179.

Additional Documentation/Representations

Prior to the CMD, by email dated 1 March 2022 Trinity Factors for the Applicant provided to the Tribunal an up to date Rent Statement showing the rent arrears due by the Respondent to be £7,897.33 as at that date.

Background

The following matters are agreed between the parties:-

- i. That on 15 April 2016 the Applicant leased the Property to the Respondent in terms of a Short Assured Tenancy Agreement ("the Tenancy Agreement").
- ii. That in terms of the Tenancy Agreement the initial term of the tenancy was from 15 April 2016 to 16 October 2016 and the tenancy continued thereafter on a month to month basis.
- iii. That the rent payable by the Respondent to the Applicant in terms of the Tenancy Agreement is £850 per calendar month payable in advance on the 15th day of each month.
- iv. That on 14 June 2021, on the instructions of the Applicant, Sheriff Officers served on the Respondent a Notice under Section 33 of the Housing (Scotland) Act 1988 together with a Notice to Quit requiring the Respondent's removal from the Property on or before 16 December 2021.
- v. That the Respondent remains in occupation of the Property.
- vi. That as at 1 March 2022 the rent arrears due by the Respondent to the Applicant amounted to £7,897.33.
- vii. That as at the date of the CMD the rent arrears due by the Respondent to the Applicant amount to £8,747.33.

The CMD

a) At the CMD Ms Higgins for the Applicant made the following representations:-

- i. That as at the date of the CMD the rent arrears due by the Respondent had accrued to £8,747.33.
- ii. That on 1 March 2022 Ms Higgins intimated to the Respondent by email an up to date rent statement reflecting the rent arrears of £7,897.33 due as at that date.
- iii. That with regard to the Rent Arrears Pre-Action Requirements (Coronavirus)(Scotland) Regulations 2020, during the period 18 March 2021 to 30 June 2021 Trinity Factors on behalf of the Applicant entered into a dialogue with CHAI (Community Help and Advice Initiative), Edinburgh on behalf of the Respondent. During that period the parties had sought to agree a payment plan relative to the arrears accrued but no agreement was reached. The final proposal made on behalf of the Respondent was such that the rent would still not be paid in full every month and as a result the rent arrears would continue to increase. During that period an application for a Discretionary Housing Payment was made by CHAI to City of Edinburgh Council ("the Council") and refused. As a result of no payment arrangement having been capable of agreement, the Section 33 Notice and Notice to Quit were served.
- iv. That on 14 March 2022 Trinity Factors had received from the Council an email indicating that the Respondent's Housing Benefit payments had been suspended with effect from 14 March 2022. Housing Benefit had been paid to 28 February 2022 and the Respondent required to get in touch with the Council by 14 April 2022.
- v. That Trinity Factors wrote to the Respondent by email and by post on 14 March 2022 with a copy of the communication from the Council.
- vi. That it was reasonable for an eviction order to be granted. The Applicant wants to take the Property back in order to work out how best to move forward. She might rent the Property again or might sell it. The rent was not being paid in full and the Respondent had received multiple opportunities to resolve the position. The Respondent had previously been served with Notices to Quit on 16 October 2018. However, no eviction proceedings were then raised due to a substantial payment being paid towards the arrears on the day the Notices to Quit expired.

- vii. That the only payments being made are payments of Housing Benefit by the Council and even these are now suspended. The Respondent cannot afford to live in the Property. The rent has never been increased throughout the duration of the tenancy and is now substantially under market value.

The Applicant therefore sought to increase the sum claimed to £7,897.33 and thereafter sought an order for payment.

b) At the CMD the Respondent made the following representations:-

- i. That the arrears figures as narrated on behalf of the Applicant were correct and that she received on 1 March 2022 Trinity Factors email of that date.
 - ii. That on 14 March 2022 she received the same email from the Council as that sent to Trinity Factors with regard to the suspension of Housing Benefit. The Council had previously sent an email to the Respondent on 2 February 2022 but she did not receive that communication.
 - iii. The Respondent telephoned the Council yesterday to advise that there had been no change in her circumstances and she intends to attend at their offices immediately after the CMD to provide wage slips etc at which point payment of Housing Benefit will be reinstated.
 - iv. That the Respondent lives in the Property with her four children who are aged 17, 13, 9 and 2 years of age. She has no spouse or partner living with her.
 - v. That the Respondent works in a bar, working 16 hours each week for which she is paid approximately £142.86 each week.
 - vi. That the Respondent also receives Working Tax Credit of £305 every four weeks, Child Tax Credit of £235 every week and Child Benefit of £250 every four weeks.
 - vii. She accepted that she cannot make up the shortfall in the rent due each month from the income she receives.
 - viii. The Respondent accepted that it would not be reasonable to expect the Applicant to carry on in the current situation and appreciated why an application for her eviction had been made.
 - ix. The Respondent has applied to the Council for accommodation but her application will not be considered until an eviction order is granted.
 - x. That she had no proposals to put to the Applicant to clear the arrears.
 - xi. The Respondent would need a little time to move out the Property.
- c) The Tribunal thereafter adjourned briefly to enable the Applicant's representative to forward a copy of the email to the Respondent dated 1 March 2022 and to forward to the Tribunal the communications exchanged between them and CHAI between 18 March 2021 and 30 June 2021. The Tribunal duly received and considered that additional documentation.

Findings in Fact

- i. That on 15 April 2016 the Applicant leased the Property to the Respondent in terms of the Tenancy Agreement.
- ii. The Tenancy Agreement is a Short Assured Tenant Agreement.
- iii. That in terms of the Tenancy Agreement the initial term of the tenancy was from 15 April 2016 to 16 October 2016 and the tenancy continued thereafter on a month to month basis.

- iv. That the rent payable by the Respondent to the Applicant in terms of the Tenancy Agreement is £850 per calendar month payable in advance on the 15th day of each month.
- v. That on 14 June 2021, on the instructions of the Applicant, Sheriff Officers served on the Respondent a Notice under Section 33 of the Housing (Scotland) Act 1988 together with a Notice to Quit requiring the Respondent's removal from the Property on or before 16 December 2021.
- vi. That the Respondent remains in occupation of the Property.
- vii. That as at 1 March 2022 the rent arrears due by the Respondent to the Applicant amounted to £7,897.33.
- viii. That as at the date of the CMD the rent arrears due by the Respondent to the Applicant amount to £8,747.33.

Reasons for Decision

The factual background was not in dispute between the parties and the Respondent accepted the rent arrears accrued.

Decision

The Tribunal therefore:-

- i. Allowed the application to be amended in terms of Rule 14A of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 to increase the sum claimed to £7,897.33; and
- ii. Thereafter granted an order in favour of the Applicant for payment by the Respondent of £7,897.33.

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: Gillian Buchanan

Date: 16 March 2022