



**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) 2016 Act**

**Chamber Ref: FTS/HPC/CV/22/0084**

**Re: Property at 27D Bruce Street, Dunfermline, Fife, KY12 7AG (“the Property”)**

**Parties:**

**Elaine Fletcher, 6 Alva Street, Edinburgh, EH2 4QG (“the Applicant”)**

**Anthony Davies, 13/8 Admiralty Street, Edinburgh, EH6 6JT (“the Respondent”)**

**Tribunal Members:**

**Joel Conn (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**Background**

- 1) This was an application by the Applicant for civil proceedings in relation to a private residential tenancy in terms of rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”), namely an order for payment of rent arrears. The tenancy in question was a Private Residential Tenancy of the Property by the Applicant to the Respondent commencing on 23 September 2020.
- 2) The application was dated 12 January 2022 and lodged with the Tribunal on or around that date. The application was accompanied by a correspondence supporting arrears of £3,450, being sums said to be due for a shortfall of £150 in rent due on 23 August 2021 (for the month to 22 September 2021) and then four months unpaid rent of £825/m for rent due on 23 September, 23 October, 23 November, and 23 December 2021 (for rent due to 22 January 2022). The lease for the tenancy accompanied the application and detailed a rental payment of £825 payable in advance on the 23<sup>rd</sup> of each month.

- 3) In advance of the CMD, further to enquiries from the Tribunal, the Applicant's representative confirmed the Respondent had vacated the Property. A new address was provided but the Respondent was not found to be there. Further to enquiries by the Tribunal's Sheriff Officer, the Respondent's new home address of 13/8 Admiralty Street, Edinburgh, EH6 6JT was identified.

### **The Hearing**

- 4) On 12 May 2021, at a case management discussion ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote conference call at 10:00, I was addressed by Sarah Scott, Property Manager, and Carol Reid, Accounts Manager, of Demia Ltd t/a Martin & Co, being employees of the Applicant's representatives. There was no appearance by the Respondent.
- 5) As of 10:08, there was no appearance from the Respondent (that is, he did not call into the teleconferencing number, nor did he do so by the time the call concluded around 10:17). The Applicant's agents confirmed that an agreement had been reached between the parties whereby the Respondent terminated his tenancy voluntarily on 22 January 2022, so as to avoid further arrears accruing, and with an agreement between the parties that arrears to 22 January 2022 were £3,450. This was said to be documented in writing though the documentation was not lodged with the Tribunal as at the time of the CMD.
- 6) I was satisfied that the application papers and notification of the CMD had been served by Sheriff Officers on the Respondent at his new address. The Tribunal's clerk confirmed that there was no contact from the Respondent on the application. I was thus satisfied to consider the application in full at the CMD in the absence of the Respondent.
- 7) The Applicant's representatives confirmed that the order for payment was still sought and that it was in the amount of £3,450 in the application, being the final arrears due (further to the agreement between the parties on termination of the Tenancy). The Applicant's agents stated that the Respondent had routinely made large payments of rent in arrears. He had made a payment in or around Summer 2021 which paid a few months of rent, and left £675 to be applied against the rent due on 23 August 2021. This resulted in the arrears of £150 for August/September 2021 and no rent had been paid since (being a further four months up to the date of voluntary termination). I took the Applicant's agents though the arithmetic of that figure and together we confirmed that our calculations agreed.
- 8) The Applicant's representatives further explained that the deposit had been fully applied against dilapidations due to the condition the Property had been left in. This had been attended through the tenancy deposit scheme provider, with nothing left to be applied against the arrears.

- 9) There was no interest rate in the Tenancy Agreement and, after some consideration, the Applicant's agents chose to make no motion for interest. No motion seeking expenses was made.

### **Findings in Fact**

- 10) On 23 September 2020, the Applicant let the Property to the Respondent by lease with a start date of 23 September 2020 under a Private Residential Tenancy ("the Tenancy").
- 11) Under the Tenancy, in terms of clause 8, the Respondent was to make payment of £825 per month in rent to the Applicant in advance, being a payment by the 23<sup>rd</sup> of each month to cover the month to follow.
- 12) As of 12 January 2022, there was unpaid rent of £3,450 being a balance of £150 unpaid rent due on 23 August 2021, and further rent due for 23 September, 23 October, 23 November, and 23 December 2021 (each £825 per month).
- 13) On 12 January 2022, the Applicant raised proceedings against the Respondent for an order for payment of rent arrears of £3,450.
- 14) The parties negotiated that the Tenancy would voluntarily terminate at 22 January 2022 with no further rent due after that date by the Respondent. The Respondent vacated the Property as at 22 January 2022.
- 15) On 30 March 2022, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondent, providing the Respondent with sufficient notice of the CMD of 12 May 2022 and the details for dialling into the conference call.
- 16) The Respondent provided no evidence of payment of any part of the said unpaid rent of £3,450.

### **Reasons for Decision**

- 17) The application was in terms of rule 111, being an order for civil proceedings in relation to a PRT. I was satisfied, on the basis of the application and supporting papers, that rent arrears of £3,450 were outstanding as of today for the rent due to 22 January 2022. I was further satisfied to accept that the Tenancy had been terminated as at that date.
- 18) The application clearly set out the sums and I was taken through the simple arithmetic. It would have been preferable to have had a written statement and a copy of the agreement between the parties but, on the basis of the uncontradicted statement of the Applicant's agents, I was satisfied that the necessary level of evidence for such civil proceedings had been provided. No dispute was stated by or on behalf of the Respondent. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full

panel of the Tribunal and I was satisfied to make a decision at the CMD to award the sum of £3,450 against the Respondent.

### **Decision**

19) In all the circumstances, I was satisfied to make the decision to grant an order against the Respondent for payment of £3,450.

### **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.**

**J. C**

**Legal Member/Chair**

J. C

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**Date**