

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

Chamber Ref: FTS/HPC/CV/22/1615

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

Parties:

Dr Ann Haley, Mrs Jean Young, 34 Queen Margaret Close, Edinburgh, EH10 7EE; West Byre, Cauldbarns Farm, Stirling, FK7 8HH (“the Applicants”)

Miss Nicola Fox (otherwise known as Nicola Maxwell, Nicola Fox-Maxwell, Nicola Gonelli), 1 Corstorphine House Terrace, Edinburgh, EH12 7AE (“the Respondent”)

Tribunal Members:

Sarah O'Neill (Legal 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 by the respondent of the sum of £5226.23 should be granted in favour of the applicants.

1. By application received on 26 May 2022, the applicants submitted an application seeking a payment order brought in terms of rule 111 (Application for civil proceedings in relation to a private residential tenancy) of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”). The applicants sought an order for payment of £3800 in respect of rent arrears which were due to be paid by the respondent to the applicant.
2. The application stated that the total outstanding rent arrears came to £10725. A payment order had been granted for the sum of £6925 in relation to a previous application (reference no: FTS/HPC/CV/22/3022). The present application was therefore seeking a payment order for the remaining balance of £3800.

3. Attached to the application form were:
 - i. copy private residential tenancy agreement between the parties in relation to the property which commenced on 1 March 2019
 - ii. rent statement showing the outstanding arrears due as at 23 May 2022 to be £10725.
4. The application was accepted on 9 June 2022. The application papers, together with notice of the case management discussion (CMD) scheduled for 11 August 2022, were served on the respondent by sheriff officer on behalf of the tribunal on 1 July 2022. No written representations or time to pay application were received from the respondent prior to the CMD.
5. The tribunal issued a direction to the applicants on 18 July 2022, requiring them to: 1) confirm whether the sum of £3800 related to rent arrears for the period from 1 February to 31 May 2022, and 2) provide copies of any letters or emails sent to the respondent regarding the outstanding rent arrears sought in the application. A response was received from Dr Haley, one of the applicants, by email on 27 July 2022. Attached to this was an email dated 23 May 2022 from the applicants' letting agent to the respondent notifying her of the outstanding arrears due up to 31 May 2022.
6. In her email of 27 July, Dr Haley also requested to amend the amount sought in respect of rent arrears to £5100. She stated that as the respondent had stayed in the property beyond 31 May 2022, rent was also now due for the month of June 2022. An updated rent statement dated 25 July 2022 was attached, showing that there were outstanding rent arrears of £12025 as at the end of June 2022.
7. In the same email, Dr Haley requested to amend the application to add the sum of £126.53 in relation to the cost of employing sheriff officers to serve a charge on the respondent in respect of an eviction order granted by a previous tribunal. An invoice from Scott and Co sheriff officers dated 18 July 2022 relating to this was attached.
8. On 2 August 2022, a further email was received from Dr Haley, attaching: 1) an email sent by the applicants' letting agent to the respondent on 1 June 2022 notifying her of the increased arrears; 2) an email from Dr Haley sent to the respondent on 27 July 2022 informing her of the amendment request made to the tribunal; and 3) evidence, consisting of documentation left in the property and the tenant application form which had been completed by the respondent at the start of her tenancy, that the respondent appeared to be known by several different names.

The CMD

9. A CMD was held by remote teleconference call on 11 August 2022. Both applicants were present on the teleconference call. The respondent was not present and was not represented. The tribunal delayed the start of the discussion by 10 minutes, in case the respondent had been detained. She did not appear, however, and no telephone calls or messages had been received from her.
10. The tribunal legal member noted that the respondent appeared to have now left the property and asked the applicants when she had left. Dr Haley said that the charge period had expired on 29 June and the applicants believe that the respondent had left on that date. The keys had been returned to the letting agent on 30 June 2022. The legal member noted that the certificate of intimation of service by Walker Love sheriff officers stated that the papers for the CMD had been served on the respondent at 1 Corstorphine House Terrace, Edinburgh EH12 7AE.
11. The covering letter from Walker Love stated that the papers were served on the respondent on 1 July 2022 by means of a letterbox and that they had established that the respondent now lived at this address. The covering letter stated that having first gone to the property address, the sheriff officers found to be unoccupied and that the landlady, who was at the property, had told them that the respondent had left two days previously. The applicants confirmed to the tribunal that they had both been at the property when the sheriff officers arrived. They said they had no forwarding address for the respondent. The legal member noted that in their covering letter, Walker Love stated that the new address for the respondent had been captured from the credit reference databases.
12. In light of this information, the tribunal considered that it was entitled to rely on the certificate of intimation provided by the sheriff officers. It was therefore satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a CMD had been duly complied with. It therefore proceeded with the CMD in the absence of the respondent.
13. The applicants told the tribunal that they had served a notice to leave on the respondent requiring her to leave by mid-March 2022, but she had failed to move out. An eviction order had been granted requiring her to leave in early June. When she had not done so, they had instructed sheriff officers to serve a charge on her, which expired on 29 July 2022.
14. They said that the respondent had made no payments towards her rent or her outstanding arrears since the previous payment order was granted. There had

been no contact from her since 30 June 2022, when she had sent the applicants a WhatsApp message saying that she had left the property.

15. The applicants confirmed that they sought to amend the sum claimed in respect of rent arrears to £5100, to include the rent payable for the month of June 2022. They also wished to claim the sum of £126.53 in respect of the charge for payment.
16. The legal member inquired as to what had happened to the £1500 tenancy deposit which had been paid by the respondent at the start of her tenancy. The applicants said that the process relating to the allocation of the deposit was still ongoing. They said, however, that the claim they had made to the tenancy deposit scheme in respect of cleaning and damage to the property was in excess of the deposit sum.

Findings in fact

17. The tribunal made the following findings in fact:

- The private residential tenancy between the parties commenced on 1 March 2019.
- The rent payable under the tenancy agreement was £1300 per month, payable in advance on the 1st day of each month.
- The respondent paid a tenancy deposit of £1500 at the commencement of the tenancy.
- The respondent vacated the property on or around 29 June 2022
- As at 30 June 2022, the respondent owed the applicants £12,025 in rent arrears.
- A previous tribunal had granted a payment of order for £6925 in favour of the applicants against the respondent.
- The outstanding balance of the rent arrears due was therefore £5100.
- The applicants had incurred costs of £126.53 in respect of service of a charge following the respondent's failure to leave after an eviction order was granted.
- The respondent is also known by several other names, namely Nicola Maxwell, Nicola Fox-Maxwell and Nicola Gonelli.

Reasons for decision

18. The tribunal consented to the amendment request made by the applicants to increase the arrears sought to £5100. This was the balance of the sum shown on the updated rent statement attached to the amendment request, under deduction of £6925 in respect of which an order had already been granted. The

amendment request had been sent to the tribunal and to the respondent at least 14 days before the CMD, as required in terms of rule 14A of the 2017 rules.

19. In respect of the request to add the sum of £126.53 for service of the charge on the respondent, the tribunal noted that this was a request to amend the application in respect of a new issue under rule 14 of the 2017 rules. The amendment request had been sent to the tribunal and to the respondent at least 14 days before the CMD, and no representations had been received from the respondent in relation to this. The tribunal accepted that this sum had been paid to Scott and Co, and consented to the amendment.
20. In the absence of any written representations from the respondent disputing the facts, or any appearance by her at the CMD, the tribunal considered that it was able to make sufficient findings to determine the case, and that to make a decision without a hearing would not be contrary to the interests of the parties. It therefore proceeded to make a decision at the CMD without a hearing in terms of rules 17(4) and 18 (1) (a) of the 2017 rules.
21. On the basis of all the evidence before it, the tribunal was satisfied that the respondent owed £5100 in rent to the applicants as at the date of the CMD. It was also satisfied that the applicants had incurred costs of £126.53 for service of a charge for payment on the respondent.
22. The applicants pointed to the evidence that they had provided that the respondent appears to be known by several other names. They therefore asked the tribunal to add these other names to the payment order. The tribunal agreed to do so.
23. For the reasons stated above, the tribunal decided to make an order for payment by the respondent to the applicants of £5226.63.

Decision

The tribunal grants an order for payment by the respondent to the applicants for the sum of £5226.63.

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.

S. O'Neill

Legal Member/Chair

— 11 August 2022
Date