

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/22/4072

Re: Property at 6/6 Lyne Street, Edinburgh, EH7 5DW (“the Property”)

Parties:

Mr Paul Scott, Mrs Sheila Hobbs, 6 Lussielaw Road, Edinburgh, EH9 3BX (“the Applicant”)

Mr Kieron King, 6/6 Lyne Street, Edinburgh, EH7 5DW (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order for the amount of £ 5,785 by the Respondent to the Applicants should be granted.

A: Background

1. The application for an order for payment of rent arrears under S 71 of the Private Housing (Tenancies) (Scotland) Act 2016 arising from a Private Residential Tenancy Agreement between the parties was made by the Applicants on 10.11.2022. The amount claimed in the application was initially £5,687 and this was amended to £5,910 by their email on 31.1.2023.
2. The following documents were lodged by the Applicants to support the application:
 - a. Copy tenancy agreement between the parties over the property commencing on 28.5.2021
 - b. tenancy rent statement from September 2021 to 19.10.2022
 - c. updated rent statement from September 2021 to January 2023
 - d. correspondence between the parties between 21.6.2022 and 13.10.2022 regarding arrears and payment offers.

3. The application and notification of the Case Management Discussion (CMD) were served on the Respondent by Sheriff Officers on 7.2.2023. The Tribunal was satisfied that the Respondent had the required notice of the CMD as set out in Rules 17 (2) and 24 (2) of the Procedural Rules.
4. On 8.3.2023 Mr King submitted written representations and also asked for a postponement of the CMD. The application for postponement was refused. The following documents were submitted by the Respondent;
 - a) textmessage with GP surgery
 - b) Virgin Media advice of outstanding payment balance
 - c) copy of medication prescription slips
 - d) text messages between Mr Scott and Respondent
 - e) Letter re application for Adult Disability Payment
5. The case documents, including the refusal of the postponement request, are referred to for their terms and held to be incorporated herein.

B: Case Management Discussion

1. The CMD took place by teleconference on 10.3.2023. The Applicant Mr Scott and the Respondent Mr King participated in the CMD by teleconference.
2. The legal member explained the purpose of the CMD.
3. Mr King confirmed that due to various personal problems rent arrears had built up. He explicitly did not dispute the accuracy of the rent statement and stated he had now made contact with various agencies, had applied for Universal Credit and should get his future rent paid and had applied for help with the Scottish Disability Fund, Step Change, Change Works for funding and assistance. He had a work coach and was trying to get into work. All he could promise at the moment was the regular payment of the rent through Housing Benefit but he was trying to tackle the arrears. However, he had no funds to make a specific payment offer for repayment at this point. He stated he had been very intimidated by the papers he had received and had not opened them for a while after they were served. However, ultimately he was aware of the arrears and had made two payments since, namely £500 about 2 weeks ago and a further £300 yesterday.
4. Mr Scott stated that he had sent an updated rent statement to the Tribunal which seemed not to be with the case papers. He stated he had received a receipt for the email. The updated statement showed the arrears at £6,085 following the rent charge of £675 for February and a payment of £500 from Mr King. After a brief adjournment when Mr Scott checked his bank account he also confirmed that a further payment of £300 had now been received as stated by Mr King. He confirmed that the up to date amount of arrears had now reduced to £5,785 from £5,910 as per the last statement in the papers. However, the £5,785 were still outstanding and he would seek a payment order for that amount. The amounts in green on the rent statement had been included as payments by CEC on behalf of Mr King although Mr Scott had not verification these had ever been received. For the purpose of calculating the arrears, these sums had been accounted for as having been payments received, giving Mr King the benefit of the doubt.
5. Mr King confirmed that this would then be the accurate amount. He stated he was concerned because he did not have the funds to pay the amount. He would try to pay what he could.

C: Findings in Fact:

Based on the evidence lodged and the representations of the participants at the CMD the Tribunal makes the following findings in fact:

1. The property was let on a Private Residential Tenancy Agreement commencing on 28.5.2021.
2. The parties were the landlords and tenant of said Tenancy Agreement.
3. The tenancy is ongoing.
4. The monthly rent of £675 is payable on the 28th day of the month and monthly in advance.
5. Rent arrears of £5,785 accrued to the date of the CMD on 10.3.2023 and remains outstanding.
6. Previous payment plans offered by the Respondent had not been adhered to.
7. No time to pay direction application has been made.

D: Reasons for decision

1. Relevant legislation:

In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

(d) discussing what witnesses, documents and other evidence will be required;

(e) discussing whether or not a hearing is required; and

(f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Power to determine the proceedings without a hearing

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties

2. The Tribunal did not consider that there was any need for a hearing as there had been no representations from the Respondent challenging that the rent arrears were outstanding and calculated correctly.

3. The Tribunal makes the decision on the basis of the documents lodged by the Applicants and the information provided by Mr King and Mr Scott at the CMD.

4. The Tribunal is thus satisfied that the Respondent had entered into a Private Residential Tenancy Agreement with the Applicant for the property. The rent was £675 per month and payments were made as set out in the rent statement lodged, followed by a further rent charge of £675 for February and a total payment of £800 by the tenant. No application for a time to pay direction or any other representations were provided by the Respondent offering a reliable payment plan. The amount of £5,785 was less than the amount stated in the rent statement of 31.1.2023 and thus the amendment of the sum to the correct outstanding sum was allowed. The Respondent had due notice of the application and has not disputed the amount.

5. Mr King expressed concerns as he stated he does not have the funds to pay that amount. He may benefit from money advice and further discussions with his landlord. However, lack of funds is not a defence to the application. Payment of the rent arrears is due to the Applicants and the Applicants are thus entitled to the order being made.

6. As the amount is due and not disputed, there is no need for a hearing and the Tribunal thus grants a payment order for the amount of £5,785 for the arrears of rent up to and including the date of the CMD on 10.3.2023.

E: Decision:

The Tribunal grants the order for payment of the amount of £5,785 by the Respondent to the Applicants.

F: 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.



Petra Hennig McFatridge

Legal Member/Chair

10.3.2023

Date