



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act
2014**

Chamber Ref: FTS/HPC/CV/22/4371

Re: Property at 118 Merkland Lane, Aberdeen, AB24 5RQ ("the Property")

Parties:

Mrs Angela Knight, Ginsterweg 2E, 40489, Dusseldorf, Germany ("the Applicant")

Mr Jason Glover, 118 Merkland Lane, Aberdeen, AB24 5RQ ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member) and Sandra Brydon (Ordinary Member)

1. Decision

At the Case Management Discussion ("CMD"), which took place by telephone conference on 16 March 2023, the Applicant was not present but was represented by Ms Rebecca Esson of Raeburn Christie Clark & Wallace LLP, Aberdeen. The Respondent was also present.

The CMD was in respect of this matter and the related case bearing reference FTS/HPC/EV/22/4370.

Prior to the CMD the Tribunal had received an email from Ms Esson dated 7 March 2023 with additional inventories of productions.

The Respondent had lodged no written representations.

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

2. Background

The Tribunal noted the following background:-

- i. The Applicant leased the Property to the Respondent in terms of a Private Residential Tenancy Agreement ("the PRT") dated 1 and 2 June 2021 that commenced on 4 June 2021.
- ii. The rent payable in terms of the PRT is £595 per calendar month payable in advance on the 4th day of each month.

- iii. On 31 October 2022, the Applicant's agent served on the Respondent by email a Notice to Leave requiring the Respondent remove from the Property by 1 December 2022 on the basis of Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 in that rent arrears of £2,380 had accrued.
- iv. On 31 October 2022 the Applicant's agent sent to the Respondent by email a letter relative to the pre-action protocol.
- v. On 9 December 2022 the Applicant's agent served on Aberdeen City Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

3. The CMD

(a) At the CMD Ms Esson for the Applicant made the following representations in respect of this application and the associated application FTS/HPC/EV/22/4370:-

- i. The current rent arrears balance payable by the Respondent is £4,930. The last payment of rent was £425 on 7 March 2023.
- ii. Ms Esson has been in communication with the Respondent and a Housing Officer at Aberdeen City Council who is assisting the Respondent.
- iii. The Respondent has put forward a proposal for payment of the arrears acceptance of which would be conditional upon an eviction order being granted by the tribunal. The proposal is that the Respondent will pay £595 per month by way of the ongoing monthly rent plus an additional £100 per month towards the arrears, all to be paid on the 4th day of each month.
- iv. The Respondent has completed an income and expenditure form upon which the Applicant's instructions have not yet been received.
- v. Previously, the Applicant had tried to contact the Respondent repeatedly in an attempt to avoid his eviction but he did not engage.
- vi. The Respondent also refused entry for gas safety checks.
- vii. Ms Esson wrote to the Respondent on 29 November 2022 about access to the Property. The Respondent did not respond.
- viii. The pre-action correspondence sent to the Respondent directed him to sources of advice. He failed to respond.
- ix. Ms Esson understood the Respondent had recently gained employment which has allowed him to put a payment proposal which the Applicant is considering but any such arrangement is conditional upon an eviction order being granted.
- x. The Applicant is suffering financial hardship as a consequence of the rent not being paid. Prior to the most recent payment the arrears amounted to 9 months of rent. She was distressed due to the Respondent not being contactable. She is having difficulties with her mortgage due to the lack of income. She was also in breach of her insurance due to gas safety checks not being carried out.
- xi. The Property is the Applicant's only leased property.

Ms Esson therefore invited the tribunal:-

- To allow the application to be amended in terms of Rule 13 of the First-tier Tribunal for Scotland Housing & Property Chamber Rules of Procedure 2017 ("the Rules") to increase the sum claimed from the Respondent to £4,930; or in the alternative to allow the application to be amended in terms of Rule 14A and in doing so to shorten the time for intimation detailed within Rule 14A all as per Rule 16A(a) of the Rules. The application to amend was made after 4 March to allow the rent that fell due on that date to be included in the total sum claimed.

- To grant a payment order.

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

- i. He lives in the Property alone.
- ii. On 7 March 2023 he started a new job as a chef at a hotel in Aberdeen. Prior to that he had not been working for a number of months.
- iii. The Respondent is paid fortnightly. His first wage is paid on 17 March 2023.
- iv. His proposal is to pay £595 per month by way of ongoing rent plus an additional £100 per month towards the arrears.
- v. Having paid £425 on 7 March he will pay a further sum of £170 on 17 March 2023, making the total rent of £595 for March 2023.
- vi. Previously he was going through a contentious divorce. He caught COVID 7 times and developed long COVID which led to depression.
- vii. His hours in his previous job reduced and reduced until he went off sick in July 2022. He lost that job in December 2022. He did not apply for any state benefits whilst off sick and was in receipt of statutory sick pay only.
- viii. The Respondent spent months inside with the curtains shut and did not reach out for help.
- ix. Now, his health is much better. He has had mental health issues in the past and exercise helped his recovery. He is now looking after himself.
- x. He has completed a Bachelor's Degree in Cyber Security and Network Management. He is now studying for an industry certificate that will allow him to work in that field.
- xi. He is speaking with the Housing Officer at Aberdeen City Council regarding alternative accommodation but would like to continue to live in the Property.
- xii. He has other debts and is liaising with Aberdeen City Council about a plan to deal with those.

4. Findings in Fact

- i. The Applicant leased the Property to the Respondent in terms of a Private Residential Tenancy Agreement ("the PRT") dated 1 and 2 June 2021 that commenced on 4 June 2021.
- ii. The rent payable in terms of the PRT is £595 per calendar month payable in advance on the 4th day of each month.
- iii. The rent arrears balance as at the CMD is £4,930.
- iv. The Respondent's last payment was £425 on 7 March 2023 towards the rent due on 4 March 2023.
- v. The Respondent proposes to pay £595 per month by way of the ongoing monthly rent plus an additional £100 per month towards the arrears.
- vi. The Respondent continues to live in the Property. He lives there alone.
- vii. Previously, the Respondent failed to engage with the Applicant and her agents with regard to the rent arrears.
- viii. The Respondent went through a contentious divorce. He caught COVID 7 times and developed long COVID which led to depression. His hours in his previous job reduced and reduced until he went off sick in July 2022. He lost that job in December 2022. He did not apply for any state benefits whilst off sick and was in receipt of statutory sick pay only.
- ix. The Respondent spent months inside with the curtains shut and did not reach out for help. The Respondent's health is much better. He has completed a Bachelor's Degree in Cyber Security and Network Management. He is now studying for an industry certificate that will allow him to work in that field.

- x. On 7 March 2023 the Respondent started a new job as a chef. Prior to that he had not been working for a number of months.
- xi. The Respondent is paid fortnightly. His first wage is due to be paid on 17 March 2023.
- xii. The Respondent has other debts and is liaising with Aberdeen City Council about a plan to deal with those.

5. Reasons for Decision

The factual background was not in dispute between the parties.

The arrears balance at the date of the application to the tribunal was £3,570.

The arrears balance as at the CMD is £4,930.

By email dated 7 March 2023 Ms Esson sought to amend the payment application to increase the sum claimed from the Respondent to £5,355. At the CMD she accepted the arrears balance to have reduced to £4,930 and sought to amend the application to that amount in terms of Rule 13.

The tribunal did not accept that the amendment could be made in terms of Rule 13 (which is subject to Rule 14 and therefore also Rule 14A) but rather ought to have been made in terms of Rule 14A. However, Rule 14A, requires that the application to amend be intimated to the tribunal and to any other party to the application at least 14 days prior to a case management discussion or hearing. Ms Esson therefore asked the tribunal to exercise its discretion under Rule 16A(a) to shorten the period for intimation required by Rule 14A in that her application to amend was lodged on 7 March 2023.

The tribunal noted that no evidence of intimation of the application to amend on the Respondent had been provided and therefore Rule 14A had not been complied with to that extent. In addition the tribunal did not consider it appropriate to shorten the period for intimation required by Rule 14A. There was no proper basis to do so in the circumstances and no adequate reason was given to exercise its discretion under Rule 16A(a).

Ms Esson did not address the tribunal on the claim for payment of interest on the amount claimed all as sought in the application. The tribunal noted there to be no interest provision in the PRT and, in these circumstances, was not prepared to make any order relative to payment of interest.

In that the sum of £425 paid by the Respondent on 7 March was clearly towards the March rent payable the tribunal decided to make an order for payment of £3,570.

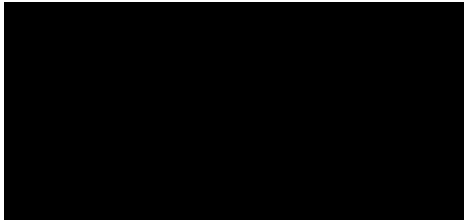
6. Decision

The tribunal –

- i. Refused the Applicant's application to amend the application;
- ii. Made a payment order against the Respondent in favour of the Applicant in the sum of £3,570; and
- iii. Refused the Applicant's claim for payment of interest.

7. 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/Chair

16 March 2023
Date