



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) Act 2016

Chamber Ref: FTS/HPC/CV/23/1484

Re: Property at 2/L 12 Victoria Mansions, 12 Victoria Road, Kirkcaldy, KY1 1DU (“the Property”)

Parties:

Mr Frank Mackay and Mr Jack MacKay, 30 West Acres Drive, Newport on Tay, Fife, DD6 8NR (“the Applicant”)

Ms Anna Wojtas, 2/L 12 Victoria Mansions, 12 Victoria Road, Kirkcaldy, KY1 1DU (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Respondent)

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

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order in favour of the Applicant against the Respondent for payment of FIVE THOUSAND TWO HUNDRED AND EIGHTY-FIVE POUNDS AND EIGHTY PENCE (£5,285.80) STERLING.

Background

1. An application had been received under Rule 111 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure)

Regulations 2017 (“the 2017 Rules”) seeking an order for payment of rent arrears.

2. The application contained: -

1. the tenancy agreement,
2. the notice to leave with evidence of service.
3. section 11 Notice with evidence of service
4. evidence of pre-action protocol
5. rent statement.
6. Evidence of landlord registration

3. This was a case management discussion on 26 September 2023. The applicant Frank MacKay appeared. The respondent did not appear. Service of the application had been made on the respondent on 21 August 2023. The tribunal was entitled to continue with the case management discussion.

4. It was noted that the property was owned by Frank Mackay. He advised that he was the owner, and he had appointed his son to be the landlord as he had been working away. Her moved to amend the application to make both himself and his son joint applicants. This was granted by the tribunal.

Discussion

5. The applicant advised that he was seeking an order for recovery of the possession of the property under the ground 12A (substantial rent arrears). There had been 6 months’ rent arrears when the notice to leave was served on the respondent. The arrears had increased since the application was made, they now totalled £5,285.80 as of 1 September 2023.

6. He advised that he was also seeking a payment order for this amended sum of £5285.80.

7. He advised that there had been no further payments or reduction in the rent arrears since the last rent statement was submitted to the tribunal on 11 September 2023. He advised that he had emailed the tenant the updated rent statement on the 11 September 2023.

8. He advised that he had had difficulties contacting the tenant. She had changed her mobile number several times. He advised that he had received no payments of rent from the tenant since 1 July 2021. He advised the only payments to rent since then were what was paid by universal credit. He advised that he had tried on a number of occasions to get the tenant to discuss the rent arrears, but she would not discuss the matter with him. He had advised her, as had the DWP and also Shelter that she had to make up any shortfall in the rent, which was not covered by universal credit, however she had consistently failed to do so.

9. He advised that the landlord had helped the tenant apply for universal credit in 2021. He had tried to speak to the DWP about the tenant, but they would not discuss her situation with him. The amount of universal credit paid goes up and down, the most she gets is £375, and some months does not get anything from the universal credit. She does not pay the difference in rent.

10. He advised that they also helped her apply for a hardship loan, but this was not granted. He said that she is difficult to deal with as she will bury head in the sand. She does not answer the door.

11. He received an email from the applicant a few weeks ago, she told him that she was not going to pay the rent, she could not afford to pay anything, and she had received advice to pay nothing and wait to be evicted.

12. He believed that she was in her 30s. She lived in the house alone. It is a one-bedroom flat. He thought that she originally worked as a care assistant in Kirkcaldy but lost that job. He understood that she now worked in a restaurant.

13. He advised that he does not rent out any other properties. This flat was bought as he needed to be able to get to his work in the hospital within 15 minutes. When he moved jobs, he kept it. He does not have a mortgage on it; however, he has ongoing costs such as insurance and maintenance costs.

14. He was unaware of any health issues affecting the tenant. He thought she had had covid in 2021. He believed she was currently working. He did not know why she had stretches of time when he was paid no rent whatsoever. He did not know if the council have offered to re-house her. She was from Poland; however, he had no idea if she would remain in Scotland if the order were granted. He advised that he does not work in Fife, and he is not from the area. He does not know anything further about the circumstances of the tenant.

Findings in Fact

15. The Tribunal found the following facts established: -

16. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 1 July 2020.

17. The tenant was Anna Wojtas.

18. The landlords were Frank Mackay and Jack Mackay.

19. The property was 12 Victoria Mansions, Victoria Road, Kirkcaldy.

20. The tenancy stated that rent was £400 a calendar month payable in advance.

21. There was submitted a notice to leave dated 3 November 2022, stating that an application would not be made until 4 December 2022. It sought eviction under ground 12 and 12A rent arrears. It set out that rent arrears due were £3,912.58 as of 1 November 2022.

22. The notice to leave had been emailed to the tenant. There was evidence of service.

23. Rent arrears as of 5 May 2023 were £4,640.27.

24. Rent arrears as of 1 September 2023 were £5,285.80.

25. A section 11 notice had been sent to the local authority advising that the landlord was seeking possession of the property. There was evidence of service.

26. There were rent statements submitted showing the arrears.

27. There was evidence of correspondence between the landlord and the tenant about the rent arrears. The correspondence asked the tenant to repay the arrears.

28. There was no evidence of failure or delay in any benefit payment to the respondent.

29. There had been arrears on the account since January 2021.

30. There had been periods when universal credit had been paid.

Reasons for Decision

31. Section 71 of the 2016 Act provides the Tribunal with a power to deal with civil matters arising out of private residential tenancies, failure to pay contractual rent, is one of those matters.

33. The applicant appeared. The respondent did not appear. The applicant confirmed that he sought an order for payment. He provided rent statements in support of this claim. He advised that he had notified the tenant of the amended rent statement on 11 September 2023.

34. The tenancy contract provided that rent of £400 per month was payable by the tenant. The tenant had failed to pay all or some of that rent on an ongoing basis since January 2021. She was in breach of her contract with the landlords.

40. Considering the papers before us and the oral submission by the applicant and the respondent, the tribunal was prepared to amend the sum sued for to FIVE THOUSAND TWO HUNDRED AND EIGHTY-FIVE POUNDS AND EIGHTY PENCE (£5,285.80) STERLING and to thereafter grant the order for payment of this sum.

Decision

41. The Tribunal grants an order in favour of the Applicant against the Respondent for payment of FIVE THOUSAND TWO HUNDRED AND EIGHTY-FIVE POUNDS AND EIGHTY PENCE (£5,285.80) STERLING.

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

26 September 2023

Date