



**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/22/4085

Re: Property at 6 McLachlan Street, Larbert, FK5 3HJ (“the Property”)

Parties:

Mrs Lesley Gilliland (nee Hamilton), Saudi Aramco, Box 4464 Rtsc, 8242 Sand Dollar Lane, Ras Tanura, Saudi Arabia (“the Applicant”)

Mr Christopher Liam Cloughly, 6 McLachlan Street, Larbert, FK5 3HJ (“the Respondent”)

Tribunal Member:

Valerie Bremner (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision

The Tribunal determined that a payment order be granted against the Respondent and in favour of the Applicant in the sum of One Thousand Five Hundred and Forty Three Pounds and Forty Five Pence only (£1543.45) with interest at the rate of 8 % per year until payment is made.

The decision of the Tribunal was unanimous.

Background

1.This application for a payment order in terms of Rule 111 of the Tribunal Rules of procedure was first lodged with the Tribunal on 10th November 2022 together with a related application for an eviction order with reference HPC/EV/22/4084.The applications were accepted on 30th November 2022.A case management discussion was initially set down for 3rd March 2023.This case management discussion did not proceed as a postponement was requested on behalf of the Respondent and granted by the Tribunal. A further case management discussion was fixed for 12th May 2023 at 2pm.

2.The case management discussion was attended by Mr Jarvie of BKF solicitors on behalf of the Applicant and Miss Prochalska of Shelter Scotland for the Respondent. Neither the Applicant nor the Respondent attended the case management discussion.

3.The Tribunal had sight of the applications, a tenancy agreement, e mails regarding rent arrears, a Notice to Leave and email sending the Notice, a Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003, an email intimating this notice, letters from agents to the Respondent in terms of pre action protocols, a rent statement, two written requests from the Applicant's representative seeking to increase the sum being requested in terms of the payment order and an email from the Respondent's representative intimating details of Discretionary Housing Payment awards and universal credit payment intimations relating to the Respondent.

4.The parties had entered into a private residential tenancy agreement at the property with effect from 26th February 2021 with monthly rent of £510 payable. The tenancy agreement allowed discretion to the landlord to apply interest on late rent payments at the rate of 8% per year from the date when rent fell due until payment was made.

5.Mr Jarvie for the Applicant submitted at the case management discussion that a payment order should be granted. There had been rent arrears continuously in terms of the tenancy since 1st April 2022, in excess of a year and this was causing significant financial prejudice to the Applicant who had suffered stress as a result of the situation and loss of rental income. He indicated that it was understood that the Respondent is in receipt of benefits and was not in employment. He had no source of income and the universal credits payments he received were insufficient to cover the monthly rent of £510.Rent arrears stood at a sum in excess of £5000 and were continuing to increase. Mr Jarvie said that the Respondent simply could not pay the rent.

6.On behalf of the Respondent Miss Prochalska referred to written submissions made earlier when seeking a postponement of the first case management discussion. She asked that the matter be continued. She said that the universal credit paid to the Respondent had a partial housing element and so payment towards arrears was being made directly. The Respondent was now trying again for discretionary housing payments and was seeking adult disability payments. She indicated that the Respondent's parents were prepared to offer to make up the shortfall between benefit payments made each month and the monthly rent due starting from 27th May 2023. If the applications could not be continued to allow the offer to be considered and further applications for discretionary housing and other payments to be made Miss Prochalska requested that a hearing be fixed to consider reasonableness in terms of whether an eviction order should be made. She disputed the rent arrears said to be due and indicated that with the discretionary housing payments she had intimated together with the universal credit payments she believed the rent arrears to be £3805.33.

7.Mr Jarvie for the Applicant indicated that the offer made at the case management discussion for the Respondent's parents to make up the rent shortfall each month had not been made before and those representing the Applicant might need to make

checks against the Respondent's parents to ascertain the viability of this offer. He was seeking a payment order in the Sum of £5333.93 with interest at 8 % in term of the tenancy agreement.

8. In the light of the dispute over the amount of rent arrears said to be due by the Respondent to the Applicant the Tribunal fixed a hearing to take place by Webex video conferencing on 25th August 2023.

9. On 28th June 2023 the Respondent's solicitor lodged a first inventory of productions containing notification regarding discretionary housing payments, disability award payments, universal credit payments and emails between Letting Agents and the Respondent.

10. On 30th June 2023 the Applicant's solicitor lodged written representations regarding the outstanding rent arrears and an up-to-date rent statement.

11. On 10th August 2023 the Respondent's solicitor submitted a second inventory of productions which contained two emails from an individual at Falkirk Council and a rent statement. One of the emails lodged dated 18th July 2023 confirmed that an application for a tenant grant fund payment had been successful and the sum of £1631.71 would be paid to the landlord in relation to rent arrears accrued between 9th February 2021 and 5th July 2023. On 15th August 2023 the Tribunal was advised that the eviction application was withdrawn and that discussions were ongoing between parties' representatives regarding the payment order application.

12. On 21st August 2023 the Applicant's solicitor lodged an up to date rent statement showing rent arrears in the tenancy in the sum of £1543.45. On 24th August the Applicant's solicitor emailed the Tribunal to advise that parties had come to an agreement on the amount of the rent arrears due and that the Respondent did not oppose a payment order being granted in the sum of £1543.45. The Respondent's solicitor confirmed this by email and both parties asked that the matter be dealt with administratively. On the same date both parties' solicitors agreed that interest on any payment order granted should be restricted to 8% per year as set out in the tenancy agreement, interest having been requested in the application.

13. The Tribunal was satisfied that the application for a payment order could be dealt with administratively in terms of Rule 18 of the Tribunal rules of procedure given that the Tribunal was able to make sufficient findings in fact to allow the matter to be dealt with as the facts were no longer in dispute and that to do so would not be contrary to the interest of the parties who were both legally represented and had had come to an agreement on all matters. The hearing for 25th August was therefore discharged and the matter dealt with administratively by the Tribunal.

Findings in Fact

14. The parties entered into private tenancy agreement at the property with effect from 26th February 2021.

15. Monthly rent payable in respect of the tenancy is £510 per calendar month payable in advance.

16. Rent arrears in terms of the tenancy started to accrue in 2021 and continued to accrue in 2022 and 2023.

17. The Respondent is in receipt of Universal Credit with a discretionary Housing element, and Adult Disability payments.

18. In July 2023 an application for a payment from the tenant grant fund made on behalf of the Respondent was successful and the sum of £1631.71 was paid to the landlord in respect of rent arrears accrued between February 2021 and July 2023 in terms of the tenancy agreement.

19. As of 24th August 2023 the parties are agreed that rent arrears due by the Respondent to the Applicant in terms of the tenancy agreement stand at £1543.45 and that a payment order in this sum should be granted.

20. Clause 8 of the tenancy agreement between the parties gives the landlord discretion to charge interest on late rent payments from the date on which they fall due until paid at the rate of 8% per year.

21. Parties are agreed that interest applies to the sum outstanding at the rate of 8% per year.

22. The sum of £1543.45 is lawfully due by the Respondent to the Applicant in terms of rent arrears accrued in the course of the tenancy between the parties.

Reasons for Decision

23. Although there had initially been a dispute regarding the amount of rent arrears accrued during this tenancy, shortly before the hearing in the matter the parties came to an agreement on the sum due in respect of rent arrears and regarding the imposition of interest on the payment order. In these circumstances and given that none of the relevant facts were in dispute the tribunal granted a payment order with interest at the rate of 8% per year allowed for by the tenancy agreement.

Decision

The Tribunal granted a payment order against the Respondent and in favour of the Applicant in the sum of One Thousand Five Hundred and Forty Three Pounds and Forty Five Pence only (£1543.45) with interest at the rate of 8 % per year until payment is made.

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

25.8.23

Legal Member

Date