



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/22/0746

Re: Property at 6 Craig Avenue, Dalry, Ayrshire, KA24 5EN (“the Property”)

Parties:

Ms Melanie Scott, Birtlebog Farm, Kilbirnie, KA25 7LJ (“the Applicant”)

Miss Yasmin Graham, Mr Gary Waite, 6 Carron Place, Irvine, KA12 9ND; 37 St Margaret's Avenue, Dalry, KA24 4BA (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member)

Decision (in absence of the first Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £2,838 be payable by the Respondents to the Applicant in the sum of £150 per month.

1. This was the third case management discussion (CMD) to consider the application by the Applicant for an order for payment in respect of rent arrears from the Respondents in a tenancy where the applicant was the landlord of the Property and the Respondents were the tenants.
2. The application was lodged on 8th March 2022 and sought payment of the sum of £3,108 plus interest at the rate of 4% above base rate in respect of rent arrears
3. The following documents were lodged with or following the submission of the Application namely: - a. Tenancy agreement dated 29th November 2018 b. Rent and Transaction statement showing a sum due as at 23rd July 2021 of £3108 after deduction of a sum already awarded to the Applicant in case number CV/21/ 0341.
4. The first CMD was continued as neither the Applicant or the Respondents called in to the teleconference. The Applicant advised in writing that she had

not received notification of the first CMD despite it being sent by e-mail and advised that she did wish to continue with the claim, that £30 was claimed for tracing costs and that although she had successfully reclaimed the deposit it had been applied to a previous judgement granted by the Tribunal for initial rent arrears due in terms of this tenancy by the Respondents.

5. At the second CMD on 6th October 2022 the Applicant attended along with the second respondent Mr Waite. The Applicant advised that she was seeking an order for payment of the sum of £3108 which was the additional sum due, she advised by the Respondents, who were the tenants in the Property until 23rd July 2021. She advised she had made a previous claim for rent arrears in February 2021 for £2,160 plus interest and received an order for that amount with interest in April 2021. Since then she has received payments from the Second Respondent which together with the deposit which she has successfully reclaimed, total £2,135 which she has taken towards the sum claimed in that first case number FTS/HPC/CV/21/0341.
6. Mr Waite advised at the second CMD that he had left the Property around December 2018 about a month after entering into the lease but admitted he had not advised the landlord Ms Scott that he had left and admitted he was therefore still a tenant in the Property for the duration of the lease. He confirmed he had taken some legal advice on this and realised he was jointly liable for the rent but mentioned that he was unhappy about paying more than Ms Graham the co-tenant. He also mentioned that Ms Graham had mentioned that there were repairs outstanding at the Property which he thought may have been present for the duration of the lease.
7. The Applicant vigorously denied there were any substantial repairs ongoing during the lease apart from a repair to a boundary fence which she admitted had only been fixed this year due to difficulties liaising with and getting agreement to replace with the neighbouring owners.
8. The legal member indicated that if the Respondent was wishing to challenge that the rent or all of it was due and owing due to repairs issues he could make that motion and the case would proceed to a hearing to consider that. However evidence of the repairs and any failure to act on them would require to be lodged and witnesses led. Mr Waite indicated he would rather bring this matter to a conclusion and wanted to come to an agreement about instalment payments. The Applicant indicated she would be happy to accept a reasonable offer and after some further discussions the parties agreed they would discuss this by e-mail after the CMD to try and reach a settlement.
9. The matter was continued to see if settlement could be reached.

The Discussion

10. The CMD today took place by teleconferencing. The Applicant was in attendance and the Legal Member waited until 10.10 to see if both Respondents were going to join the call. The Second Respondent, Mr Waite did join the call but the first Respondent did not join and was not represented at the CMD. Neither Respondent had lodged any written submissions for the Tribunal to consider.
11. The legal member made introductions and explained the purpose and order of proceedings also advising that the Tribunal could make a decision after a

CMD which it could after a hearing if satisfied it was fair and appropriate to do so.

12. The Applicant advised that she and Mr Waite had discussed the application and had reached an agreement that she would accept £150 per month paid on 28th of the month towards the debt of £3108. She also confirmed that Mr Waite had paid 2 amounts of £150, the first on 9th November and the second on 13th December. Mr Waite confirmed this and explained that he was seeking to recover half the monthly amount namely £75 from his ex- partner Ms Graham the first Respondent in a separate agreement.
13. The Applicant indicated that she would prefer to receive more in monthly instalments if possible but Mr Waite advised that was not possible. The Applicant was also concerned that she was owed more money from her previous order but the legal member explained that this CMD could only discuss the current application. As a previous order for other rent arrears had been granted she could enforce it separately and could take legal advice on this from a solicitor or sheriff officer if she did not come to an agreement with the Respondents.
14. The Applicant and Respondent agreed that the sum now due for rent arrears in this application was £2,808 and the Applicant was also seeking £30 for fee from tracing the respondents and interest at 4%. The second Respondent was offering to pay this by payments of £150 per month which the Applicant accepted.

Findings in Fact

1. The parties entered into a lease of the Property whereby the Applicant leased the Property to the Respondents in the form of a Private Residential tenancy which commenced on 29th November 2018.
2. The Rent due in terms of the lease was £540 per calendar month payable in advance
3. The lease ended on 23rd July 2021.
4. The Applicant raised an application in February 2021 and obtained an order for payment of initial rent arrears for £2,160 in April 2021
5. The rent outstanding since the first order was granted amounts to £3,108 to the end of the tenancy
6. The second respondent has paid £300 towards the rent arrears in this application. The sum now outstanding is £2,808.
7. The Applicant has incurred additional fees of £30 in tracing the Respondents
8. The Deposit was reclaimed by the Applicant and put towards the initial rent arrears claimed in the order granted by the Tribunal in April 2021 and is therefore not available to put towards the current rent arrears claimed in this application.

• Reasons for Decision

9. The parties have entered into a lease where the Respondents leased the property from the Applicant and had agreed to pay £540 per month in rent.
10. The Respondents have failed to pay the full rent due. The Second respondent agreed the sum of £3,108 was due and owing when this application was raised. This represents rent due from and including 28th

February to the end of the lease on 23rd July 2021. He has agreed with the Applicant to pay this sum in instalments of £150 and is seeking reimbursement from the first respondent of £75 a month towards this sum. The second Respondent and the Applicant both agree that he has paid £300 towards this sum and the sum now due is £2,808.

11. The Applicant is also seeking repayment of the tracing costs she has incurred of £30 for which she lodged an invoice and interest at 4% on the sum due.
12. The Tribunal accepts the written evidence and verbal statements made by the Applicant and the second Respondent and in the absence of any representations from the first respondent, the Tribunal finds that rent is outstanding and remains unpaid at the sum of £2,808 in respect of the sums due from and including 28th February and finds it fair and appropriate to make an order for payment for the sum of £2,808 plus £30 to be paid in instalments of £150 per month. In respect of the interest claimed the Tribunal finds the amount of 4% to be reasonable given the current interest rates for borrowing money.

- **Decision**

An order for payment of the sum of £2,838 plus interest at 4% from the date of the order is granted.

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.

Jan Todd

Legal Member/Chair

22nd December 2022

Date