



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/20/1847

Re: Property at 17 Calderview, Motherwell, ML1 1EQ (“the Property”)

Parties:

Miss Laila Shah, 15 Grenadier Gardens, Motherwell, ML1 2SF (“the Applicant”)

Miss Sarah Dingwall, 17 Calderview, Motherwell, ML1 1EQ (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Gordon Laurie (Ordinary Member)

Decision in absence of the Respondent

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for the sum of £6,385 be granted

- **Background**

1. This was a Hearing in respect of an application by the Applicant dated 1st September 2020 for an order for payment in respect of arrears of rent against the Respondent for the period up to July 2020 in respect of her tenancy of the Property from the Applicant.

The following documents were lodged with the application:-

- A copy of the Tenancy Agreement with a commencement date of 27th September 2018
 - Copy rent statement from Puffin Properties from October 2018 to December 2018.
 - Copy rent statement from Puffin Properties from January 2020 to July 2020,
2. A Case management discussion (CMD) took place by teleconference call on 20th October 2020 where the Applicant was present and represented by her

solicitor Mr Buttery of Freelands Solicitors and the Respondent was present but was not represented. The Tribunal noted that a Hearing in an eviction action raised by the Applicant against the Respondent was due to take place on 26th October 2020. The Respondent's position was that rent arrears had accrued but the Applicant was not entitled to payment because there were essential repairs required that the Applicant had failed to arrange. The Respondent also did not accept that the rent arrears were due as stated by the Applicant, she claimed a further 3 sums had been paid which did not appear on the rent statement and advised that she had set aside the housing element of her universal credit for the last 3 months.

3. The Tribunal concluded that there was a dispute which would have to be determined at a hearing namely
 - a. What level of rent arrears were due
 - b. Whether the Respondent is entitled to withhold rent and
 - c. Whether the rent arrears are lawfully due.
4. The Tribunal granted an adjournment to a Hearing which was fixed for 7th December 2020 and notice of the hearing and details of the dial in arrangements were set out in a letter to both parties dated 13th November 2020.
5. The legal member after the CMD had issued a Direction dated 20th October 2020 asking the Respondent to "provide documentary evidence that she had set aside rent for the last 3 months; documentary evidence of rental payments being made by Universal Credit which do not feature on the rent statement produced by the Applicant and evidence of reports made by the Respondent to the Applicant or her agent regarding repairs required at the Property". The Documentation was required to be lodged by 24th November 2020.
6. The Respondent did not reply to that Direction.
7. A further Direction was sent to both parties by the Legal Member assigned to this hearing which asked for:-
 - a. "The Applicant lodged a number of productions for an eviction action relating the same parties and Property namely HPC/EV/20/556. This is a separate application and the Applicant is invited to resubmit those productions if she wishes to rely on them or any other productions she wishes to rely on for this Hearing, including the previous decision of the Tribunal.
 - b. The Applicant is requested to provide an up to date rent statement showing, rent due, rent paid and any rent outstanding.
 - c. The Respondent is required to lodge any proof of rental payments made, as already has previously been asked for and evidence she has set aside the rent that has been withheld.
 - d. As the Respondent has admitted she is not or has not paid rent in full she will be expected to lead as the first witness at the hearing on 7th December and if she proposes to lead any other witnesses she should advise the Tribunal of a list of witness names within the next 7 days.

Your response should be lodged with the Housing and Property Chamber no later than close of business on 30th November 2020".

8. The Applicant responded by lodging the same productions she had lodged previously in the eviction action which amounted to over 170 pages spread over 3 inventories of productions including numerous copy e-mails between

the parties showing the Respondent asking for repairs and showing the Applicant responding to these requests and various tradesmen not able to gain access readily.

9. The Respondent has not responded to that further Direction and has not lodged any supporting evidence although she did advise in further e-mails that she wished to have the decision in the eviction action reviewed and also that she wished to request permission to appeal it.

10. The Applicant lodged on 4th December 2020 a revised rent statement showing the sum in arrears as at December 2020 is £8760 and requested if possible to amend the sum claimed to this higher sum.

The Hearing

8. The Hearing proceeded today by way of teleconference due to the continued requirement at the current time for social distancing. The Convener made introductions, and explained how the CMD would be conducted over the teleconference. The Applicant attended and was represented by Mr Buttery as the Applicant's representative from Freelands solicitors.
9. The Respondent did not attend nor was she represented on the teleconference. The Respondent had been sent notification of the hearing and details of the telephone number and passcode for the teleconference by letter sent to her e-mail address on 13th November 2020. The Respondent has been given fair notice and the Tribunal therefore felt it was appropriate and fair to continue in her absence.
10. Mr Buttery advised that he was seeking an order for payment in the revised sum of £8760. He acknowledged that the application to amend the sum claimed had been sent in late and so confirmed that if the Tribunal was not able to accept this amendment he had instructions to seek the original sum claimed namely £6,385. He referred to the findings of fact that had been made in the related eviction case under Ref FTS/HPC/20/0586 where it had been found that rent arrears of at least £6385 were lawfully due and the tenant's argument that repairs were not timeously carried out allowing her to claim that rent was not lawfully due had been rejected. He also referred to the substantial documents lodged in support of this claim.
11. The written documentation shows a tenancy had been created between the parties where the Respondent leased the Property from the Applicant from 27th September 2018 and monthly thereafter.
12. The Rent due is £475 payable monthly in advance the first payment due from 27th September to 26th October 2018.
13. From the rent statements lodged, arrears had built up from May 2019 with no rent being paid from and including May 2019 until January 2020, one payment being made in January 2020, none in February and March 2020, a further payment in April 2020 and none since. Mr Buttery is seeking an order for his clients in the full amount outstanding. He confirmed that the Respondent has not paid any further sums.
14. The Tribunal noted that the main reason for holding a hearing was to hear from the Respondent on her claim that rent was not lawfully due and to see any evidence of further payments towards the rent due that she had claimed

- had been made but did not appear on the rent statements and that as the Respondent has not attended there was no further oral evidence to consider.
15. The Tribunal noted that the Applicant was confirming there have been no further payments made and this is supported in the rent statement lodged on 4th December 2020 showing no payments made in August to December 2020.
 16. The Tribunal also noted there had been no written response from the Respondent regarding the two Directions sent to her for this application and in particular no response to the request to show evidence she was retaining money to pay rent or any response detailing the issues with repairs and her requests from May 2019 to July 2020. The Respondent did send one e-mail on 18th November 2020 with a screenshot of a text message asking for a plumber to be sent out to look at an issue with heaters that she claimed had burnt out. As this appeared to relate to a current issue and does not address the request for documentation to show that rent was not lawfully due from May 2019 to July 2020 the Tribunal did not regard it as relevant to the current application.

Findings in Fact

1. The parties entered into a lease of the Property which commenced on 27th September 2018 and is still ongoing.
2. The Rent due in terms of the lease is £475 monthly payable in advance
3. The Tenant is still living in the Property.
4. The Respondent failed to pay any rent from May 2019 until January 2020. The Respondent has made one payment in January, none in February and March and one in April 2020 and after that has not paid anything towards the rent due.
5. The rent outstanding as at July 2020 is £6,385.
6. No further payments have been made towards the rent.
7. The Rent is lawfully due.

• Reasons for Decision

8. The parties entered into a lease where the Respondent has leased the property from the Applicant from 28th September 2018 and has agreed to pay £475 a month in rent.
9. The Respondent stopped paying rent in May 2019 and has only made two payments since.
10. The Respondent has admitted in this application and in the related eviction application that she has stopped paying rent, but has submitted that the rent is not lawfully due. She has also suggested that she has put aside at least some rent due but has not produced any evidence to support this.
11. The Respondent submits that there are repairs outstanding which she alleges the Applicant has not attended to the Respondent has however failed to produce any details of these in this application or produce any reports made by her requesting repairs at the Property for the period the Applicant is seeking rent for. The Respondent did submit more details in the related eviction case chamber number FTS/HPC/EV/20/0586 however after a full hearing in that case on 26th October 2020 the Tribunal held that rent

amounting to £6385 at least was lawfully due and the written decision of that case is referred to for its terms.

12. The Respondent has not attended at today's hearing or complied with the two Directions sent to her requesting further evidence therefore there is no further evidence for the Tribunal to consider regarding abatement or withholding of rent. There is also no evidence that further payments towards the rent have been made.
17. The Applicant has intimated a request to amend the sum sought to allow them to claim rent due up to December 2020 but has not complied with Rule 14A of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 which states that any amendment to the application including to the sum claimed must be intimated at least 14 days prior to a case management discussion or hearing by intimating such amendment more than 14 days before today's discussion. So the Tribunal has only considered and taken account of the rent arrears claimed up to July 2020.
13. The Respondent has failed to make full payment of rent since May 2019 and has not made any payment since May 2020. The Applicant is entitled to recover rent lawfully due which as at and including July 2020 is £6,385.
14. The Respondent has failed to attend this hearing and failed to attend the hearing for the related eviction action held on 26th October 2020. She has also failed to respond to Directions issued requiring her to lodge written evidence.
15. The Tribunal accepts the written evidence and verbal statements made by the Applicant's agent, that the rent outstanding and due by the Respondent amounts to £6,835
16. There being no application for time to pay the Tribunal makes an order for payment of the sum claimed.

Decision

- An Order for payment of the sum of £6,385 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.

J. Todd

7th December 2020

Legal Member/Chair

Date