



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/22/2363

Re: Property at 2/1 7 Crichton Place, Glasgow, Glasgow City, G21 1AY (“the Property”)

Parties:

Mrs Eveshonako Odukudu, 4 Inverlochry Crescent, Glasgow, G33 5ES (“the Applicant”)

Thomas A Sweeten, Yasmin Graham, Flat 2/1 7 Crichton Place, Glasgow, Glasgow City, G21 1AY; Flat 2/1 7 Crichton Place, Glasgow, Glasgow City, G21 1AY (“the Respondent”)

Tribunal Members:

Anne Mathie (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order in the sum of £14,180 be granted in respect of rent arrears.

Background

1. An undated and unsigned application was submitted in terms of Rule 111 of the Chamber Rules for civil proceedings in relation to a private residential tenancy in terms of section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016. The Applicant also lodged an eviction application at the same time (FTS/HPC/EV/22/2362) Along with the application form, the Applicant lodged the following documents:
 - Copy tenancy agreement
 - Copy correspondence between Landlord and Tenants
 - An additional Information sheet detailing the name and address of a second Respondent and further information in relation to the rent arrears.

2. The Tribunal wrote to the Applicant on 11 August 2022 asking for the following:
 - A signed and dated application
 - A letter of authority from the owner of the Property
 - Clarification of the postcode
 - Clarification on the relationship between the Landlord and the owner of the Property
 - Clarification of Respondent in light of the named guarantor
 - Copy rent statement
3. The Applicant's representative replied with a signed and dated application form, a copy rent statement, a letter of authority from Applicant, advising that the Applicant wanted to proceed against the Respondents and not the guarantor and clarification of the postcode.
4. The Tribunal wrote again on 27 September 2022 querying the rent arrears figure as it differed between the application form and the rent statement provided.
5. The Applicant's representative replied with further information regarding the rent arrears figure.
6. The application was accepted and assigned to a case management discussion. Intimation of the application and the case management discussion were served on the Respondent by Sheriff Officers on 14 December 2022. The Respondents were advised that they were required to submit any written representations in response to the application by 2 January 2023.
7. In the notification letters to the Respondents they were advised:

"The tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision on the application which may involve making or refusing a payment order. If you do not take part in the case management discussion, this will not stop a decision or order being made by the tribunal if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair."
8. No written representations were received.

First Case Management Discussion

9. A case management discussion took place by teleconference on 3 February 2023. The Applicant and the Applicant's representative attended. The Respondents did not attend. A case management discussion note was issued following on from this. Of particular note was the lack of clarity with the rent arrears figure and the resulting payment order sought. The Tribunal would issue a Notice of Direction addressed to the Applicant detailing the information required.

10. A Notice of Direction was issued directing the Applicant to provide the following information:

- A full rent statement showing each month from the beginning of the tenancy any rent due, any rent paid and a running total figure of rent arrears;
- Details of any further money paid by the first Respondent to the Applicant and the reasons, dates and amount of any such payments;
- Any documents showing that the actual monthly rent payments due were £550 and not £675 per calendar month as provided for in the tenancy agreement, for example, redacted bank statements or exchange of text messages in this regard;
- Any correspondence with the Department of Work and Pensions or the first Respondent regarding any amount of housing benefit paid to the first Respondent in respect of the Property.

11. The Applicant was asked to provide this information no later than close of business on the day 14 days before the continued case management discussion.

12. No further information was received by the Applicant.

Second Case Management Discussion

13. The case called for a continued case management discussion by teleconference on 31 March 2023. The Applicant and the Applicant's representative attended. There was no attendance by or on behalf of the Respondents.

14. The Tribunal advised that the application was no further forward than on 3 February 2023 as no further documents had been received from the Applicant.

15. The Applicant's representative advised that further documents had been sent by email to the Tribunal on 3 March 2023. These had never been received.

16. The Applicant's representative was asked to resend the documents and an adjournment of an hour took place to allow the Tribunal to consider the documents.

17. On reconvening the case management discussion, the Tribunal noted that the additional documents would require to be copied to the Respondents before any decision could be made. They had not engaged with the process to date but were entitled to see the further documents.

18. The Applicant's representative advised he would prefer to redact the bank statements before they were copied to the Respondents. He would send redacted copies to the Tribunal as soon as possible.

19. On questioning about the payment made by the Respondents in August 2020, the Applicant's representative agreed an extra £50 had been paid by the

Respondents towards the deposit on top of the £550 rent paid. He had restricted the rent statement to actual payments of rent but accepted that the extra £50 had been paid along with the first month's rent of £550 in cash. He confirmed that no further payments towards the deposit had been made and no other payments made by the Respondents that were not included on the rent statement.

20. The total amount of rent arrears sought exceeded the figures on the original application form. The Applicant's representative was going to consider this further.
21. The situation regarding Thomas Sweeten was complex. At the previous case management discussion on 3 February 2023 the Applicant's representative had been sure the correct name of the first Respondent was Tom Watson even although the application had been raised against, and notice of the application and previous case management discussion had been served on, Thomas Sweeten. The case management discussion note from the last case management discussion noted that the application against the first Respondent ought to be refused at the time of a decision being made. The Applicant had now lodged a copy driving license confirming that the first Respondent's name was in fact Thomas Sweeten. Two emails from Universal Credit had also now been lodged confirming Thomas Sweeten's name and occupancy of the Property. No formal notices required to be sent in relation to a Rule 111 case unlike in an eviction case. The Tribunal, in terms of Rule 32 of the Chamber Rules, had a power to make an order to add, substitute or remove a party to proceedings in certain circumstances. The Tribunal had not made such an order in relation to the first Respondent although the previous case management discussion note stated that the application against the first Respondent should be refused at the point of a decision being made in the case. In all the circumstances of this application, and taking into account the overriding objective in Rule 2 of the Chamber Rules, the Tribunal agreed, reluctantly to continue the case against the first Respondent.
22. On the Applicant raising concerns about the length of time the application was taking, the Tribunal stated that the Applicant required to bear some responsibility for this. Before the last case management discussion, the Tribunal had made several attempts to clarify the level of rent arrears for which the payment order was sought. These attempts had not been successful. The case management discussion had required to be continued in order for further information to be provided by the Applicant in this regard. Further information had apparently been sent to the Tribunal on 3 March 2023 but this had not been received by the Tribunal. The Tribunal had no reason to believe the information had not been sent but the Tribunal had not received this until after the continued case management discussion had started today. This was no-one's fault.
23. The Tribunal decided to continue the case to a further case management discussion to allow the Respondents sight of the amended information from the Applicant.

24. The case was assigned to a further case management discussion on 2 June 2023 by teleconference.

25. The Respondents were notified of this by letter dated 5 May 2023 and were again advised:

“The tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision on the application which may involve making or refusing a payment order. If you do not take part in the case management discussion, this will not stop a decision or order being made by the tribunal if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair.”

Third Case Management Discussion

26. The case management discussion took place today by teleconference. Mr Odukundu attended on behalf of Mrs Odukundu who also attended. There was no attendance by or on behalf of the Respondents. No written representations had been received from them. Mr Odukundu advised that he was seeking rent arrears in the sum of £13,130 as stated in the most recent rent statement and an extra two months rent for March and April as indicated in his email of 4 April 2023 which had been copied to the Respondents. The email of 4 April 2023 also stated:

“I hereby plead with the court to add the cost of eviction process to the tenant money, attached is the estimate cost got from Sheriff official services totalling approx.. £750 excluding locksmith key replacement cost which is £132 per hour plus VAT. The flat entrance door also has two set of locks which cost approx. 70 pounds.

Based on above cost details, I am pleading with the court to grant additional £1000 pounds to cover the eviction process cost...”

Findings in Fact

27. The Tribunal made the following findings in fact:

- The parties entered into a private residential tenancy agreement from 1 August 2020;
- Despite the written terms of the tenancy agreement, rent was agreed at the sum of £550 per calendar month;
- The Respondents paid an additional £50 cash at the commencement of the tenancy towards the deposit. No further payments were made towards the deposit;
- The Respondents had fallen into arrears of rent in the sum of £14,230

Reasons for Decision

28. The Tribunal took into account the written evidence and written submissions before it. The Tribunal also took into account the oral submissions of the

Applicant and the Applicant's representative today and at the last two case management discussions. The Tribunal declined to make any award in respect of the eviction costs as these had not yet been incurred. The Tribunal exercised its powers under Chamber Rule 14A to allow an increase in the sum sought to £14,230 on the basis that this had been intimated to the Respondents and no response had been received. The Tribunal reduced the figure by £50 to take account of the £50 cash paid by the Respondents to the Applicant towards the deposit in August 2020. There was nothing before the Tribunal to challenge these figures.

Decision

29. The Tribunal made a payment order in the sum of £14,180 in respect of rent arrears payable by the Respondents to the Applicant.

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.

Anne Mathie

2 June 2023

Legal Member/Chair

Date