



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) 2016 Act

Chamber Ref: FTS/HPC/CV/23/0327

Re: Property at Flat 0/1 109 Bowman Street, Glasgow, G42 8LE (“the Property”)

Parties:

Sultan Mahmood, 15 Park Manor Avenue, Glasgow, G53 7ZD (“the Applicant”)

Rozalia Teglas, Flat 0/1 109 Bowman Street, Glasgow, G42 8LE (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment in the sum of £5,850 with interest at 8% per annum be granted against the Respondent.

Background

- 1) This was an application by the Applicant for civil proceedings in relation to a private residential tenancy in terms of rule 111 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”), namely an order for payment of rent arrears. The tenancy in question was a Private Residential Tenancy of the Property by the Applicant to the Respondent commencing on 12 December 2019.
- 2) The application was dated 31 January 2023 and lodged with the Tribunal on 1 February 2023. The application sought payment of arrears of £7,150 due to that date with interest and was accompanied by a rent statement showing that since 12 December 2021 only one payment of £550 (made on 14 January 2022) had been received. There were thus 13 missed payments, each of £550. The lease for the Tenancy accompanied the application and it detailed a rental payment of £550 payable in advance on the 12th of each month.

Prior procedure

- 3) On 19 April 2023, in advance of the initial case management discussion (“CMD”) in the application, the Applicant lodged an Inventory including a further updated rent statement, showing the arrears then said to be £10,450 (though as I note later, this figure was subsequently found to be incorrect). A motion to amend the sum sought to that amount was made, and the Tribunal crossed the motion to amend over to the Respondent.
- 4) Shortly prior to the CMD written submissions and photographs had been lodged by the Respondent’s agent and the Applicant’s agent lodged two further Inventories and written submissions addressing some of the matters raised. The submissions addressed issues that crossed both this application and a conjoined eviction application (EV/22/0325). (A decision and order to evict were both issued in the EV application on 11 May 2023. Reference is made to that decision for any questions on that application.)
- 5) The application then called for the initial CMD on 11 May 2023 at which time both parties were represented. The Tribunal was addressed by the Applicant’s solicitor, Joanna Hogg of Stodarts. The Respondent was represented by Lyndsey McBride, Welfare Rights/ Legal Caseworker, Govanhill Law Centre.
- 6) At the initial CMD, the Applicant’s agent confirmed that the motion to amend was still insisted upon and an order for payment in the amount of £10,450 was sought. The Respondent’s agent accepted that no payments had been made since 14 January 2022 and, in line with her written submissions, gave the following explanation of the defence:
 - a) The Respondent had always paid rent in cash at the office of the Applicant’s then letting agent (GPS).
 - b) There had been wants of repairs at the Property all in the kitchen/ living room (exposed pipes in the kitchen area; a hole in the floor in the kitchen area; and general poor condition of the kitchen and the flooring in the room). In regard to these:
 - i) There was a photograph lodged of unboxed pipes in the kitchen, and a photograph of one of the pipes disconnected, but the Respondent’s agent was not aware at the CMD of the details of the plumbing issues. The Respondent did regard the pipes as a Repairing Standards issue, and not merely cosmetic.
 - ii) There was a photograph lodged of a hole in the floor, but the Respondent’s agent was not aware of the details of the problem.
 - iii) The Respondent did regard the condition of the room as a Repairing Standards issue, and not merely cosmetic. In regard to flooring, she knew that there was a vermin issue in the area, and filling up any holes and gaps could mitigate against this.
 - iv) There had been a carpet replaced in a bedroom, but the Respondent’s agent did not have information as to this being a want of repair, so did not include it in the defence.

- c) In November 2021, the Respondent had asked the Applicant's letting agents to address the repairs issues.
 - d) Someone from GPS attended at the Property at some point between November 2021 and February 2022. No work was done.
 - e) In February 2022, the Respondent attended at GPS's office again and asked about the works. She said that the letting agent was "very rude" to her, told her that they would no longer accept payments of rent from her, and that they would not do the repairs.
 - f) She returned to GPS's office on a number of occasions thereafter, asking for the work to be done and for payment details, but received no further information.
 - g) Due to the Applicant not carrying out the work, the Respondent had instructed the work herself and incurred around £3,500 in costs which she intended to set off against rent.
 - h) In March 2023, she was provided with new bank details to pay the Applicant direct. She had not yet made any payments however.
 - i) The Respondent did not hold funds to pay the historic rent unpaid since February 2022. The Respondent had offered to repay the arrears by £200/month (which would take a number of years to clear) but the Applicant had not accepted this.
 - j) The Respondent's failure to pay was not due to any financial or benefits issue.
 - k) The Respondent had not initially retained rent due to the repairs issues, though did now wish to set off the costs said to have been incurred against the outstanding rent.
- 7) The Applicant's agent disputed much of the Respondent's position, and gave the following submissions in response:
- a) The Respondent had paid rent in cash at the office of the Applicant's then letting agent (GPS). Payment by bank transfer had been requested of her but she had not set this up.
 - b) There had been persistent issues with late payment of rent. (The rent statements lodged showed irregular payments for times in late 2019 and during 2020.)
 - c) The Respondent did attend at GPS's office in February 2022 (with her partner) but it was the Respondent whom had been rude to the letting agents, saying "so what if she pays late", and that she was now not going to pay rent, before walking out.
 - d) There had been no mention to the Respondent that payment details were changing and, conversely, demand letters were issued to the Respondent by GPS on 12 March, 15 April and 13 July 2022 all asking her to make contact to arrange payment of arrears.
 - e) Following the issuing to the Respondent of the pre-action requirement letter by Stodarts on 25 January 2023, the Respondent called to speak with the Applicant's agent on two occasions. One of these calls was a call from the Respondent, with the assistance of a friend "David" as interpreter, on 7 February 2023.
 - f) It was in one of the calls to Stodarts that the Applicant first received mention from the Respondent of any repairs issues. During this call, the Respondent said she had incurred around £2,000 on repairs work. The

Applicant's agent stressed that the Respondent had moved into the Property in 2019, so even on her own submissions, she had made no mention of any wants of repair for two years.

- g) It was in one of the calls to Stodarts that, for the first time, alternative payments details were provided, being the Applicant's own bank account. (The Applicant's agent did not appear to dispute that this occurred during March 2023 as the Respondent's agent submitted.)
 - h) Following the meeting in February 2022, inspection visits to the Property had ceased due to the Respondent's behaviour towards the letting agents (though what was meant by this "behaviour" was not made clear to us, nor was it clear whether the letting agents claimed to have scheduled visits and been refused entry).
 - i) No payments had been made to the Landlord's bank details since March 2023.
 - j) The Respondent's offer of payment against the arrears was not acceptable.
 - k) No information on why the works were necessary, nor the full nature of the work, had ever been received, and the Applicant reserved his position on whether he was liable for the repairs at all.
- 8) In regard to the arrears, at the initial CMD the Respondent's agent confirmed that it was accepted that arrears were currently £10,450, subject to any valid deduction for repairs. She did not oppose amendment of the sum sought to £10,450 which was granted at the initial CMD.
- 9) In consideration of the defence put forward, but the lack of material information and vouching, the initial CMD was continued and a Notice of Direction issued setting out the further information required. Reference is made to the Notice but, in summary, the further information that parties were to provide was:
- a) The names and addresses of any witnesses they anticipated calling at any hearing to be set, along with a brief explanation as to the subject matters that they will speak to.
 - b) *(The Applicant only)* Any photographs as to the condition of the Property.
 - c) *(The Applicant only)* Any inventory, condition reports, or notes of inspections regarding the Property.
 - d) *(The Respondent only)* Any invoices, receipts, quotations, or bank statements, showing costs expended by the Respondent in regard to works.
 - e) *(The Respondent only)* A breakdown of the work undertaken.
 - f) *(The Respondent only)* A breakdown of the costs of the said works.
- 10) None of this further information was provided by either party. Further:
- a) On 31 May 2023, the Respondent's agent withdrew from acting.
 - b) Correspondence regarding the continued case management discussion (which had been set for 5 July 2023) was posted by the Tribunal to the Respondent on 6 June 2023.
 - c) On 13 June 2023, the Applicant's agent emailed the Tribunal to state:
... there were directions put in place for the applicant to produce information evidencing the condition of the property at the inception of the tenancy and at any later stage. This was on the basis that the

tenant argued at the original hearing that they had to carry out repairs to the property that cost them around £3,500 as a result of the condition of the property deteriorating.

Whilst my client continues to dispute that the property was in such a condition, they have no desire to argue about the point and accordingly have proposed that the sum of £3,500 be deducted from the sums sought as part of that action. This offer has also been intimated to the tenant but thus far they have not been back in touch nor have they agreed any payment plan in relation to the level of rental arrears.

For the avoidance of doubt therefore, the applicant is now seeking payment of the sum of £5,850, that being the outstanding rental arrears balance of £9,350 under deduction of the sum of £3,500.

Accordingly, the direction previously put in place will not be complied with...

A copy of this email was sent by the Tribunal to the Respondent by post on 15 June 2023.

The Hearing

- 11) The matter called for a continued CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 5 July 2023 at 10:00. I was again addressed by the Applicant's agent, Joanne Hogg, solicitor, Stodarts and the Applicant was on the call though gave no submissions. There was no appearance from the Respondent.
- 12) I had confirmed with the clerk in advance of commencing the CMD that no contact had been received from the Respondent (or on her behalf) with the Tribunal, whether further to the two letters sent to her by the Tribunal on 6 and 15 June 2023, or in general. Having not commenced the CMD until around 10:05, I was satisfied to consider the application in the Respondent's absence. In any case, no attempt was made by the Respondent to dial in late to the CMD.
- 13) At the CMD, the Applicant's agent confirmed that the application was still insisted upon but at the reduced figure of £5,850 set out in the email of 13 June 2023. The Applicant's agent explained that the amended sum of £10,450 was erroneous and the sum set out at the initial CMD included an arithmetical error. Notwithstanding that she had concede the amount at the initial CMD, the Applicant's agent stated that the Respondent's agent, prior to withdrawing but after the initial CMD, had called her to point out that arrears were actually £9,350. (To my calculation, having now revisited the figures, I believe the arrears at the initial CMD of 11 May 2023 were £8,880 but rose the next day, on 12 May 2023, to £9,350.) The Applicant was satisfied to concede that the figure of £10,450 had been in error and to rely on arrears of £9,350.
- 14) In regard to the reduction in the order sought to £5,850, the Applicant did not concede that any sums were due to the Respondent whether in damages or to be validly retained, but – purely for economic purposes of limiting the legal work in the application – he was willing to make an ex gratia deduction of £3,500 and

seek a figure of only £5,850 for all arrears due up to 12 May 2023. This was without prejudice to arrears arising after that date, and any other sums due under the Tenancy, such as dilapidations.

- 15) In regard to interest, the Applicant sought 8% per annum from the date of any order granted. No motion was made for expenses.

Findings in Fact

- 16) On 12 December 2019 the Applicant let the Property as a Private Residential Tenancy to the Respondent under a lease with commencement on 12 December 2019 (“the Tenancy”).
- 17) In terms of clause 8 of the Tenancy Agreement, the Respondent required to pay rent of £550 a month in advance on the 12th day of each month.
- 18) As of 12 January 2023, there was unpaid rent of £7,150 being unpaid rent due for the period 12 December 2021 to 11 February 2023, less a single payment of £550 on 14 January 2022, being thirteen unpaid months of rent at £550 per month.
- 19) On 2 February 2023, the Applicant raised proceedings against the Respondent for an order for payment of the rent arrears of £7,150 for rent due to 11 February 2023.
- 20) As of 12 May 2023, the Respondent was in arrears of rent of £9,350 for the period of rent to 11 June 2023.
- 21) The Respondent provided no evidence of payment of any part of the said unpaid rent of £9,350 for the period to 11 June 2023.

Reasons for Decision

- 22) The application was in terms of rule 111, being an order for civil proceedings in relation to a PRT. I was satisfied, on the basis of the application and supporting papers, that the necessary level of evidence for these civil proceedings had been provided showing rent arrears of £9,350 were due for the period to 11 June 2023 and remained outstanding as of today.
- 23) The Respondent had provided initial grounds to retain or dispute the rent in regard to the condition of the Property but had failed to expand on her position and provide details as to the nature of the wants of repair, how they were said to be breaches of the Tenancy Agreement, or the costs expended by her in allegedly addressing them. I am unable to consider the issues in full and a Notice of Direction has been ignored. In any case, the Applicant has offered an *ex gratia* deduction equivalent to the sums the Respondent had sought to retain. In the circumstances, I was satisfied to hold that at least a rent of £5,850 was due for payment for the period to 11 June 2023.

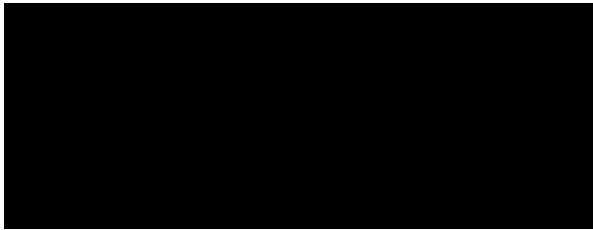
24) The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. I was thus satisfied to make a decision at the continued CMD to award the sum of £5,850, being an order restricted to sums due under the Tenancy in regard to rent up to 11 June 2023.

Decision

25) In all the circumstances, I was satisfied to make the decision to grant an order against the Respondent for payment of £5,850 with interest at 8% per annum from the date of this Decision.

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

5 July 2023

Date