



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/22/2917

Re: Property at 153 Forth Crescent, Menzieshill, Dundee, DD2 4JA (“the Property”)

Parties:

Complementary Properties Ltd, 14 Esk Point, Dalkeith, EH22 1HW (“the Applicant”)

Clara Turner, 153 Forth Crescent, Menzieshill, Dundee, DD2 4JA (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

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 Procedure 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 5 May 2021.
- 2) The application was dated 12 August 2022 and lodged with the Tribunal on or around that date. The application sought payment of arrears of £2,954.12 and was accompanied by a rent statement showing arrears to 12 August 2022 of £4,679.12. The application explained that the arrears of £1,725 due to the period to 30 November 2021 had already been sought, and an order granted, in an earlier application CV/21/2720. (We were able to confirm this from the Tribunal’s

records.) The balance of £2,954.12, which covered arrears of rent from 1 December 2022 to 12 August 2022 (for rent through to 31 August 2022), was sought in this application. It was the net remaining due from rental payments of £575 due on 1 December 2021 to 1 August 2022 (9 months of payments) less irregular sums paid on 20 December 2021, 14 January 2022 (two payments), 18 February 2022, 17 March 2022, 17 May 2022 (two payments), and 17 June 2022. The lease for the tenancy accompanied the application and detailed a rental payment of £575 payable in advance on the 1st of each month.

- 3) Prior to the case management discussion, an updated statement was provided showing further missed rental payments, and that the arrears covering the period to 31 October 2022 now amounted to £5,829.12. The Applicant's email sought to amend the sum sought but this amendment was not intimated on the Respondent in advance of the CMD and was not then moved at the CMD.

The Hearing

- 4) The matter called for a case management discussion ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 24 October 2022 at 14:00. We were addressed by Caitlin McKendrick, Accounts Supervisor of the Applicant's letting agent, Tay Letting. There was no appearance from the Respondent.
- 5) We were informed by the Clerk that no contact had been received from the Respondent (or on her behalf) with the Tribunal. The Applicant's agent said the last material contact on arrears was by telephone in June 2022 at which a payment proposal was made but not fulfilled. Subsequent contact had been made by the Applicant's letting agent in regard to maintenance and inspections but the Respondent had not cooperated. We considered that the Respondent had received clear intimation of the CMD and, having not commenced the CMD until around 14:05, we were 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.
- 6) At the CMD, the Applicant confirmed that the application for an order for payment of £2,954.12 was still insisted upon, to cover the period 1 December 2022 to 31 August 2022, without prejudice to lodging a further application for sums due after that date.
- 7) There was no interest sought in the application but clause 8 of Tenancy Agreement referred to a contractual rate of 8% and the Applicant's agent sought 8% from the date of order, again without prejudice to seeking historic interest in a future application. No motion was made for expenses.

Findings in Fact

- 8) On 30 April and 4 May 2021, the Applicant let the Property to the Respondent under a Private Residential Tenancy with commencement on 5 May 2021 ("the Tenancy").

- 9) Under the Tenancy, in terms of clause 8, the Respondent was to make payment of £575 per month in rent to the Applicant in advance, being a payment by the 1st of each month to cover the month to follow.
- 10) Further in terms of clause 8, "interest on late payment of rent may be charged by the Landlord at eight per cent per year from the date on which the rent is due until payment is made."
- 11) As of 31 August 2022, there was unpaid arrears of rent of £4,679.12 being the rent due for the period 1 September 2021 to 31 August 2022 of £6,900 less payments received between 20 December 2021 and 17 June 2022 totalling £2,220.88.
- 12) Of the unpaid arrears of rent of £4,679.12, those outstanding for the period 1 December 2022 to 31 August 2022 amount to £2,954.12.
- 13) On 12 August 2022, the Applicant raised proceedings against the Respondent for an order for payment of the then rent arrears of £2,954.12.
- 14) On 30 September 2022, the Tribunal intimated during a CMD to the Respondent the date and time of the CMD of 24 October 2022.
- 15) The Respondent provided no evidence of payment of any part of the said unpaid rent outstanding for the period 1 December 2022 to 31 August 2022 of £2,954.12.

Reasons for Decision

- 16) The application was in terms of rule 111, being an order for civil proceedings in relation to a PRT. We were satisfied, on the basis of the application and supporting papers, that rent arrears for the period 1 December 2022 to 31 August 2022 of £2,954.12 remained outstanding.
- 17) The application clearly set out the sums and we were satisfied that the necessary level of evidence for these civil proceedings had been provided. No dispute was stated by or on behalf of the Respondent. The Procedure 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. We were thus satisfied to make a decision at the CMD to award the sum of £2,954.12 against the Respondent with interest at 8% from today's date until payment, being an order restricted to sums due under the lease in regard to rent arrears for the period 1 December 2022 to 31 August 2022.

Decision

- 18) In all the circumstances, we were satisfied to make the decision to grant an order against the Respondent for payment of £2,954.12 with interest at 8% from the date of this order until payment.

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. Conn

24 October 2022

Legal Member/Chair

Date