



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/22/2150

Re: Property at 62 Keir Hardie Road, Larkhall, South Lanarkshire, ML9 2ND (“the Property”)

Parties:

Claire Robb, David Robb, 38 Station Road, Carluke, ML8 5AD (“the Applicant”)

Miss Tanith Gardener, 62 Keir Hardie Road, Larkhall, South Lanarkshire, ML8 5AD (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatrige (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order for the amount of £ 2,380.00 by the Respondents to the Applicant together with interest at the rate of 4% per annum from the date of the decision on 1 December 2022 should be granted.

A: Background

This is an application for payment of outstanding rent lodged with the Tribunal on 4.7.22 in terms of S 71 (1) of the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act) and Rule 111 of the Procedure Rules.

The Applicant had lodged the following documents in evidence:

- a) Private Residential Tenancy Agreement (PRT) for the property commencing 28.11.18
- b) rent statement 28.10.18-28.5.22
- c) rent statement 28.10.18-28.10.22
- d) notice to leave dated 28.11.21 with rent statement 31.10.18-28.10.21

- e) email sending same dated 28.10.21
- f) S 11 notice and email sending same to South Lanarkshire Council on 4.7.22
- g) PARs letter to Respondent from Anna Wood Let Alliance dated 21.4.22 with cover email
- h) updated rent statement to 28.8.22
- i) Email chain between Respondent and Let Link regarding rent arrears
- j) Letter from South Lanarkshire Council to Let Link dated 2.11.21
- k) Agreement to Defer Rental Payments dated 8.10.20 and subsequent letters by Let Link to Respondent.

The following documents were received from the Respondent:

- a) representations dated 14.9.22
- b) Letter from Respondent's representative dated 6.10.22
- c) Medical report for Respondent from Dr Tolman dated 25.11.22
- d) Medical report for Respondent's son from Dr Tolman dated 25.11.22

The application was accepted on 27 July 22 and a Case Management Discussion (CMD) was scheduled for 7.10.22. The Respondent was notified of the application and the CMD date and manner of joining through service by Sheriff Officers.

At the CMD the Applicants were represented by Ms Wooley of Bannatyne Kirkwood France & Co. The Respondent was represented by Ms McLanders from Shelter. A further CMD was scheduled for 1.12.22 to allow the Respondent to produce further documents. Directions were issued to both parties.

Both parties were notified of the new CMD date. The Applicant's representative submitted the documents stated in the Direction by 2.11.22. On 28.11.22 the Respondent's representative submitted the medical reports for the Respondent and her son but no further documentation.

The documents and the Tribunal's CMD note of 7.10.22 are referred to for their terms and held to be incorporated herein.

B The Case Management Discussion

The legal member explained the purpose of the CMD and the format this was to take.

Ms Wooley advised that the current arrears have now increased to £2,380.00 following a further payment of £364.60 on 14.11.22 and a further rent payment of £395 falling due on 28.11.22.

On behalf of the Respondent Ms McLanders advised that the rent arrears are not in dispute. There was no opposition to the amendment of the amount to the up to date figure. There was no defence to the payment action. No payments had been made by the Respondent. She had some issues with Child Tax Credit as this had to be recalculated following the birth of her youngest child but she is still receiving Employment Support Payments. Her mother had recently been in hospital causing her additional expenses. She had been referred to a Money and Debt Advisor on 28.9.22 but initially had not engaged. She has now been referred again and had a telephone consultation with the CAB on 9.11.22. There was no current proposal for payment.

C: Findings in Fact

Based on the evidence lodged and the representations of the participants at the CMD the Tribunal makes the following findings in fact:

1. The parties were landlord and tenant of a Private Residential Tenancy over the property which commenced on 28.11.18 and is currently ongoing.
2. The monthly rent for the property was £395 per calendar month in advance (clause 8) payable on the 28th day of each month
3. As at 7 October 2022 the arrears of rent are £2,380.00.
4. The Respondent has not made direct payments to the Applicant since 22.7.21.
5. There is no interest provision specified in the tenancy agreement.

D: Reasons for Decision:

1. The Tribunal considered that the material facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or
- (c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;
- (b) identifying what facts are agreed between the parties;
- (c) raising with parties any issues it requires to be addressed;
- (d) discussing what witnesses, documents and other evidence will be required;
- (e) discussing whether or not a hearing is required; and
- (f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

2. However, in terms of Rule 18 of the Rules of Procedure:

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

- (i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

- (ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

- (i) correcting; or
- (ii) reviewing on a point of law, a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

4. The Tribunal did not consider that there was any need for a hearing. Both parties agreed that there was no defence to the order being granted. There was no motion for a time to pay direction or for further procedure.

5. The Tribunal makes the decision on the basis of the documents lodged by the Applicant and the information provided by both representatives at the first and second CMD.

6. The Tribunal is thus satisfied that the Respondent had entered into a Private Residential Tenancy Agreement with the Applicants for the property. The rent was paid as set out in the rent statement lodged. No application for a time to pay direction were provided by the Respondent. The amount stated in the application as amended at the second CMD was due and resting owing as of the date of the second CMD. As the amount is due and not disputed there is no need for a hearing and the Tribunal thus grants a payment order for the amount of £2,380.00 for arrears of rent.

7. There are no provisions for interest payments on rent arrears in the PRT. The application included a crave for interest to be paid from the date of the decision at the Tribunal's discretion. In terms of Rule 41 A of the Procedural Rules

"Interest on orders for payment

41A.—(1) The First-tier Tribunal may include interest when making an order for payment.

(2) Where paragraph (1) applies, the interest is to be at the rate either—

(a) stated in the relevant tenancy agreement, or

(b) ordered by the First-tier Tribunal,

and running from the date of the decision of the First-tier Tribunal."

The Tribunal considers that in this case interest on the outstanding amount should be paid at the rate of 4 % per annum.

8. The decision of the Tribunal is unanimous.

E: Decision:

The Tribunal grants the order for payment of the amount of £2,380.00 by the Respondent to the Applicant together with interest at the rate of 4% per annum from the date of the decision on 1 December 2022.

F: 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.

Petra Hennig-McFatrige

**Petra Hennig McFatrige
Legal Member/Chair**

**1 December 2022
Date**