



Decision of the Case Management Discussion of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules) in relation to an application for civil proceedings relative to a Private Residential Tenancy under Rule 111 of the Procedure Rules.

Chamber Ref: FTS/HPC/CV/22/3081

30 McLaren Court, Hawick, TD9 8HN ("the Property")

Parties:

Susan Lilley residing at Tayhill House, Gannochy Road, Perth, PH2 7EF ("the Applicant")

Kay Miller residing at 65 Ruberslaw Road, Hawick ("the Respondent")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal")

Tribunal Members: Jacqui Taylor (Legal Member)

Background

1. The Applicant submitted an application to the Tribunal for payment of arrears of rent in the sum of £3160.28 being the sum outstanding as at 24th August 2022. The Application explained that the Respondent is due to pay the Applicant rent under the tenancy agreement between the parties and the Respondent has had failed in her obligation to do so.

2. Documents lodged with the Tribunal.

Documents lodged with the Tribunal by the Applicants were:

2.1 A copy of the Tenancy Agreement.

2.2 Rent Statement for the period 3rd April 2018 to 5th June 2022 which showed rent arrears of £3160.28 as at 5th June 2022.

3 No Written Representations were lodged on behalf of the Respondent.

4 First Case Management Discussion

This case called for a conference call Case management Discussion (First CMD) at 14.00 on 5th June 2023.

4.1 The Applicant attended the First CMD.

The Respondent did not attend and was not represented.

A letter containing details of the First CMD had been served on the Respondent by Dale Barrett, Sheriff Officer on 27th April 2023.

The Tribunal were satisfied that the Respondent had received notice of the First CMD, as required by Tribunal Rule 24(1), and proceeded with the First CMD.

4.2 Oral Representations by the Applicant:

4.2.1 The Respondent vacated the Property on 15th December 2022.

4.2.2 The Respondent had paid a deposit of £ 520 on 5th April 2018. She was not sure what had happened to the deposit.

4.2.3 The final outstanding rent figure was £4760.28.

4.3 The Tribunal continued the Case Management Discussion to allow time for the Applicant to make an application to amend the application to increase the sum claimed; to clarify the position regarding the deposit and also to provide a rent statement evidencing the increased sums sought.

5. Additional Written Representations by the Applicant.

The Applicant's Representative Susie Lilley of Lilley Properties provided the Tribunal with an updated rent statement for the period 9th November 2021 to 5th December 2022 showing an outstanding balance of £3853.51.

6. Second Case Management Discussion

This case called for a continued conference call Case management Discussion (Second CMD) at 10.00 on 7th July 2023.

6.1 Both parties attended the Second CMD.

Mrs Taylor acknowledged that the Respondent had sent the Tribunal an email at 9am on 7th July 2023 but explained that this could not be considered as it had not been lodged with the Tribunal timeously in terms of the Tribunal rules. However, she advised the Respondent that she would be able to make oral representations to the Tribunal.

6.2 Oral Representations by the Applicant:

Ms Lilley advised that she had omitted to make an application to the Tribunal to increase the sum sought.

6.3 Oral Representations by the Respondent:

6.3.1 She accepted that the rent due as at 24th August 2022 was £3160.28.

6.3.2 She moved out of the Property on 1st December 2022 and not 15th December 2022. She had wanted to make payments to the Landlord but the letting agent had not provided her with the Landlord's contact details. She had not previously returned the

time to pay application as she did not agree that the tenancy end date was 15th December 2022.

6.3.3 She is in a position to pay £50 per month and would increase the payments once her other debts have been paid off. She is now working and in receipt of Universal Credit. She will complete the Time to Pay Application form.

6.4 The Tribunal determined that the application should proceed to a further continued Case Management Discussion to allow time for the Respondent to lodge a Time to Pay Application in respect of the sum sought of £3160.28 being the sum due as at 24th August 2022.

7. Productions submitted by the Applicant.

Ms Lilley lodged a rent statement for the period 3rd April 2018 to 4th July 2022 which included a payment of £50 made by the Respondent on 13th September 2022 and showed the outstanding balance to be £3110.28.

9. Time to Pay Application.

The Respondent sent the Tribunal a Time to Pay Application by email on 22nd September 2023.

The Respondent indicated that she admitted liability of the sum sought by the Applicant. She advised that she has started college and is no longer in receipt of benefits. She receives a bursary and is in employment. She hopes to increase her hours. Her monthly income amounts to £748 and her monthly outgoings amount to £881.

10. Third Case Management Discussion.

This case called for a continued conference call Case management Discussion (CMD) at 10.00 on 29th September 2023.

10.1 Both parties attended the CMD.

10.2 Oral Representations by the Applicant:

10.2.1 Ms Lilley advised that the sum sought should be reduced to £3110.28 being the outstanding figure detailed on the rent statement that has been produced. In connection with the Time to Pay Direction application she is happy to accept the sum of £50 per month.

10.3 Oral Representations by the Respondent:

10.3.1 Ms Miller confirmed that she presently does not have any free income. She has applied for assistance with her rent through her college and if her application for assistance is accepted she will then have free income. She acknowledged that if her Time to Pay Direction Application was accepted it would take over five years to repay the sums due.

11. Decision

11.1. Requirements of Section 111 of the Procedure Rules.

11.1.1 In connection with the requirements of section 111 the Tribunal determined that the application correctly detailed the requirements of section 111(i), (ii) and (iii) of the Procedure Rules namely:-

- (i) the name and address of the Applicant.
- (ii) the name and address of the Respondent.
- (iii) the reason for making the application.

11.1.2 The Tribunal also confirmed that the application had been accompanied by the documents specified in **Section 111(b)(i) and (ii) and (iii)** of the Procedure Rules being a copy of the lease and the statement of rent arrears.

11.2 The Tribunal accepted as correct the evidence of the rent statement produced which showed the outstanding rent as at 4th July 2022 to be £3110.28.

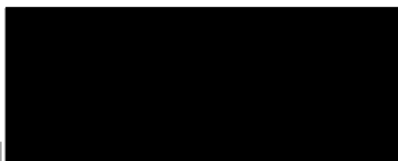
11.3 The Tribunal considered the Time to Pay Direction Application submitted by the Respondent. In terms of section 1 of the Debtors (Scotland) Act 1987 the Tribunal may make a Time to Pay Direction if it is satisfied that it is reasonable in all the circumstances to do so taking account of the matters detailed in subsection 1A of the Act. The matters referred to in subsection (1A) are: (a) the nature of and reasons for the debt in relation to which decree is granted; (b) any action taken by the creditor to assist the debtor in paying that debt; (c) the debtor's financial position; (d) the reasonableness of any proposal by the debtor to pay that debt; and (e) the reasonableness of any refusal by the creditor of, or any objection by the creditor to, any proposal by the debtor to pay that debt.

The Respondent has stated that she has no free income and has not demonstrated to the Tribunal her ability to pay the suggested instalments of £50 per month. In the circumstances the Tribunal refuse the Time to Pay Direction application.

11.4 The Tribunal determined that the outstanding rent due by the Respondent as at 4th July 2022 amounted to £3110.28 and accordingly, they issued an Order for Payment in this sum.

12. 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

29th September 2023

