



Decision 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/23/4467

Re: Property at 11 Thistle Street, Galashiels, TD1 1LX (“the Property”)

Parties:

Miss Angela Foss, 2 Brockbank, Tweedbank, Galashiels, TD1 3SZ (“the Applicant”)

Mr Gordon McPhail, 11 Thistle Street, Galashiels, TD1 1LX (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the Respondent to the Applicant in the sum of £5450.00.

Background

1. By application dated 11 December 2023 the Applicant applied to the Tribunal for an order for payment in respect of alleged rent arrears arising from the Respondent’s tenancy of the property. The Applicant submitted a copy of the tenancy agreement together with a rent statement in support of the application.
2. Following further correspondence between the Applicant and the Tribunal administration the sum claimed was increased to £4950.00.
3. By Notice of Acceptance dated 15 January 2024 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

4. Intimation of the CMD was served on the Respondent by Sheriff Officers on 26 February 2024.
5. By email dated 3 March 2024 the Applicant sought to amend the sum claimed to £5450.00.
6. By email dated 13 March 2024 the Respondent submitted written representations to the Tribunal together with an application for a Time to Pay Direction.
7. By email dated 18 March the Applicant responded to the application for a Time to Pay Direction opposing the instalments offered by the respondent.
8. By emails dated 19 March the Tribunal received further written representations from both the Applicant and the Respondent.
9. By emails dated 20 and 30 March the Tribunal received further written representations from the Respondent.

The Case Management Discussion

10. A CMD was held by teleconference on 4 April 2024. The Applicant attended in person as did the Respondent.
11. The Applicant advised the Tribunal that the rent arrears currently amounted to £5950.00. She accepted that the sum claimed had not been amended in accordance with the Tribunal rules and that in the circumstances the Tribunal could only award the sum previously claimed namely £5450.00 and asked the Tribunal to grant an order for payment in that amount.
12. The Tribunal sought to ascertain from the Respondent if he accepted that the sum of £5450 was due by him to the Applicant. After some discussion as to whether the Respondent was entitled to a reduction in rent in respect of a faulty boiler during the period from February to June 2022 the Respondent accepted that he was due the sum claimed. This was on the basis that if he continued with his opposition the Tribunal would fix a hearing at which evidence would be led and in the interim the Applicant indicated she would make a further application to amend the sum claimed to include the rent due to the end of the tenancy.
13. The Tribunal then considered whether in the circumstances it should make a Time to Pay Direction. The Tribunal noted that the Respondent hoped to move into a Housing Association tenancy in the next two weeks at a lower

rent but even after taking this into account it seemed that an instalment of £100.00 per month would be as much as the Respondent could afford. The Respondent said that he hoped to find employment in the future and if he did would be prepared to clear the debt more quickly.

Findings in Fact

14. The Respondent owed rent of £5450.00.

Reasons for Decision

15. The Tribunal was satisfied from the written representations and documents submitted by the Applicant together with the oral submissions from both parties that the Applicant was entitled to an order for payment by the Respondent in the sum of £5450.00.

16. After taking account of the Respondent's financial circumstances and the length of time it would take to repay the debt by instalments of £100.00 per month, namely four and a half years, the Tribunal determined that it should not make a Time to Pay direction.

Decision

17. The Tribunal finds the Applicant entitled to an order for payment by the Respondent to the Applicant in the sum of £5450.00.

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.

**Graham Harding
Legal Member/Chair**

**4 April 2024
Date**

