



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/20/2421

Re: Property at 106 Arran Drive, Auchinleck, KA18 2BS (“the Property”)

Parties:

Mrs Janice Elizabeth Andrews, 8 The Grove, Musselburgh, EH21 7HD (“the Applicant”)

Mr Shaun Samson, 106 Arran Drive, Auchinleck, KA18 2BS (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order for the amount of £ 2,475.25 by the Respondent to the Applicant should be granted.

Background and Case Management Discussion

1. The application for an order for payment of rent arrears under S 71 of the Private Housing (Tenancies) (Scotland) Act 2016 arising from a Private Residential Tenancy Agreement between the parties was made by the Applicant's representatives D W Shaw on 17 November 2020.
2. The following documents were lodged to support the application:
 - a. Copy tenancy agreement
 - b. Record of rent arrears from 1 November 2019 to 3 November 2020
 - c. Notice to Leave dated 4 February 2020.
3. The application was originally for a payment order in the sum ££3,246.79 and indicated as the Rule applicable Rule 111 of the Procedural Rules.
4. On 7 December 2020 the Respondent was served by Sheriff Officers with the case papers and the notification for the Case Management Discussion (CMD) on 18 January 2021. The Tribunal was satisfied that the Respondent had the

required notice of the CMD as set out in Rules 17 (2) and 24 (2) of the Procedural Rules.

5. No representations from the Respondent were received by the Tribunal.
6. By correspondence of 16 December 2020 the Applicant's representatives moved for an amendment of the sum outstanding to £2,475.25 and submitted an up to date rent statement for the period up to and including 1 December 2020, which had also been sent to the Respondent by letter dated 16 December 2020.
7. The CMD took place on 18 January 2021 by telephone conference call.
8. The Applicant participated together with her solicitor Ms Jeffrey, the Respondent did not participate.
9. Ms Jeffrey confirmed that neither the Applicant nor the representatives had had any contact from the Respondent.
10. The Applicant clarified that the statement submitted showing the arrears up to 1 December 2020 was slightly inaccurate, as the due date for the weekly rent was always on a Friday. Unfortunately she had now identified that the dates shown on the statement after 29 May 2020 were not the Fridays but the following Tuesdays of the weeks and thus each date shown on the statement after 29 May 2020 should be 4 days earlier to show the correct Friday due date. However, as of 1 December 2020 the sum shown on the statement was correct. The next payment was then due on 4 December 2020 and neither that payment nor any subsequent payments had been made. The outstanding sum as of the date of the CMD was now 7 weeks at £ 53.25 more. However, as the Respondent had been sent the letter of 16 December 2020 with an updated amount, this was the amount the order was sought for at the moment. Any further outstanding sums could be recovered separately. The order of £2,475.25 would thus cover the arrears from 1 November 2019 up to and including the rent payment due on 27 November 2020.
11. Ms Jeffrey moved for a payment order for the sum of £ 2,475.25

Findings in Fact:

1. The property was let on a Private Residential Tenancy Agreement commencing on 8 February 2019.
2. The parties are the landlord and tenant of said Tenancy Agreement.
3. The tenancy is ongoing.
4. The weekly rent for the property is £73.25 payable weekly in advance on the Friday.
5. Rent arrears accrued as per the Rent Statement up to 1 December 2020, covering the period of arrears due up to the payment date of 27 November 2020.
6. For the period stated above the rent arrears of £2,475.25 are still outstanding as at the date of the CMD.

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.

3. The documents lodged are referred to for their terms and held to be incorporated herein.

4. The Tribunal did not consider that there was any need for a hearing as there had been no representations from the Respondent and the application had not been opposed.

5. The Tribunal makes the decision on the basis of the documents lodged by the Applicant and her solicitor and the information given at CMD.

6. The Respondent had fair notice of the representations of the Applicant forming the reasons for the application and has not challenged these. As no representations were received from the Respondent by the Tribunal, the facts of the case are not in dispute. This includes the rental statement up to 1 December 2020.

7. The Tribunal is thus satisfied that the Respondent had entered into a Private Residential Tenancy Agreement with the Applicant for the property with a weekly rental charge of £73.25 and a start date of 8 February 2019. The Tribunal is further satisfied that the rent arrears are as set out in the Rent Statement to 1 December 2020, although the due date for the last rental payment due for said statement would have been Friday 27 November 2020.

8. The Applicant is entitled to a payment order for the sum of £2,475.25 for the rent arrears for the rental due up to and including 27 November 2020 as claimed in the amended application for rent arrears accrued under the tenancy agreement to that date.

Decision:

The Tribunal grants the order for payment of the amount of £2,475.25 by the Respondent to the Applicant.

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 McFatridge

Legal Member/Chair

18 January 2021

Date