



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/22/3592

Re: Property at 7 Greenoakhill Road, Uddingston, Glasgow, G71 7PS (“the Property”)

Parties:

Fraser Law, Sarah Al-Shamma, 7/2 100 Lancefield Quay, Glasgow, G3 8HF (“the Applicants”)

Tamara Diaz, 7 Greenoakhill Road, Uddingston, Glasgow, G71 7PS (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment in the sum of £14,360 with interest at 8% from the date of the order be granted against the Respondent.

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 Rules”), namely an order for payment of rent arrears. The tenancy in question was a Private Residential Tenancy of the Property by the Applicants to the Respondent commencing on 3 September 2021.
- 2) The application was undated but lodged with the Tribunal on 30 September 2022. The application sought payment of arrears of £14,360 due to that date and was accompanied by a rent statement showing nine missed rental payments of £1,795/month from 3 December 2021 to 3 August 2022 (so a total due of £16,155 actually due for rent to 2 September 2022). The lease for the

Tenancy accompanied the application and it detailed a rental payment of £1,795 payable in advance on the 3rd of each month.

The Hearing

- 3) 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 16 March 2023 at 14:00. We were addressed by the Applicants’ agent Tanya Murray, solicitor, of Lyons Davidson Scotland LLP. There was no appearance from the Respondent.
- 4) We were informed by the clerk that no contact had been received from the Respondent (or on her behalf) with the Tribunal. The Applicants’ agent said that the Respondent was believed not to have been at the Property since at least 25 January 2022. The last contact by the Respondent with the Applicants was an email by her to the first named Applicant on 17 January 2022 when she said payment of the then arrears of December 2021 and January 2022 would be cleared. Further emails by the first named Applicant to the Respondent later in January 2022 went unanswered. The Respondent thereafter contacted the Applicants’ agent on 20 May 2022 following service of the Notice to Leave, when she stated a number of complaints about the Tenancy and the Applicants’ behaviour, and suggested she may take her own legal action (which she did not). We review some of this below, and review it all in the conjoined eviction application (EV/22/3524).
- 5) The Tribunal’s Sheriff Officer had intimated the CMD at the Property and been satisfied that the Respondent remained there (though the basis for his assessment was not clear from his Certificate of Intimation). Given the conjoined application for eviction from the Property, service upon the Respondent at that address was to be expected. 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 Applicants’ agent confirmed that the order was still sought. An updated rent ledger to 3 March 2023 was lodged with the Tribunal prior to the CMD showing arrears were now £28,720 (16 months of arrears). No payments had been received since the application was lodged. The Applicants’ agent was not aware of any issues with benefits.
- 7) In considering the conjoined eviction action, we noted a number of points pertinent to this application:
 - a) After the rent for December 2021 was missed, the first named Applicant wrote to the Respondent by email on 30 December 2021 complaining about a lack of communication and payment.
 - b) The Respondent responded on 30 December 2021 by email referring to being ill with Covid and “having issues with my work”. In regard to the arrears, she said she had “asked family for some help”.

- c) On 10 January 2022 (by which time a second month of rent had been missed), the first named Applicant emailed back asking if the Respondent had any update regarding family assistance.
 - d) On 17 January 2022, the Respondent emailed to say “I have the situation sorted with my family helping out and I will clear the balance of December and January by the end of the week”. No payment was made.
 - e) On 24 January 2022, the first named Applicant attended at the Property to fit new fire alarms and found the Property unoccupied and unsecured.
 - f) On 25 January 2022, the first named Applicant emailed the Respondent regarding the previous day’s visit and that the “house looked very empty with no belongings or furniture” and saying that a “neighbour said she saw what she thought was you moving out yesterday”. He asked for confirmation whether the Respondent was seeking to terminate the Tenancy. He added that he had found her telephone number to be disconnected.
 - g) Shortly afterwards, the Applicants changed the locks. They emailed the Respondent to say that the locks were changed for security reasons, but that the Respondent was not being evicted and should make contact for the keys. (This information was provided by the Applicants’ agent after the adjournment, and the email was not read to us, but paraphrased by the agent.)
 - h) At some point the Applicants were told by neighbours that the Respondent was residing abroad, but they have not verified this.
 - i) Subsequent to the Applicants’ agent emailing the Respondent the Notice to Leave on 19 May 2022, the Respondent emailed the agent on 20 May 2022 back with a number of complaints, such as about the locks being changed without her authority, about an uncontrolled rodent infestation at the Property, and about the Applicants making defamatory comments. The Respondent made a threat to take matters further unless everything was dropped. The Applicants disputed the contents of the email.
 - j) The Applicants had received no indication that the Respondent was seeking benefits nor that there was any reason for non-payment arising from a benefit application.
- 8) The Applicants were in receipt of a “rent guard” insurance, which paid them out equivalent to the unpaid rent through to the rent due on 3 February 2023. The insurance was now exhausted, and the insurers had an entitlement to recover any rent recovered from the Respondent during this period. The Applicants’ agent held that a contractual liability under the Tenancy by the Respondent was thus unsatisfied and the insurance policy did not have an effect on the Applicants’ entitlement to seek an order for payment.
- 9) No motion was made for expenses. There was no interest rate in the Tenancy Agreement and, though the application made no reference to interest, the Applicants’ agent sought 8% from the date of order in terms of Rule 41A.

Findings in Fact

- 10) On 2 September 2021, the Applicants let the Property to the Respondent under a Private Residential Tenancy with commencement on 3 September 2021 (“the Tenancy”).
- 11) In terms of clause 7 of the Tenancy Agreement, the Respondent requires to pay rent of £1,795 a month in advance on the 3rd day of each month.
- 12) As of 3 July 2022, there was unpaid rent of £14,360 being unpaid rent due for the period 3 December 2021 to 2 August 2022, being eight unpaid months of rent at £1,795 per month.
- 13) On 30 September 2022, the Applicants raised proceedings against the Respondent for an order for payment of the rent arrears of £14,360 for the eight month period of 3 December 2021 to 2 August 2022.
- 14) On 13 February 2023, the Tribunal intimated to the Respondent the date and time of the CMD of 16 March 2023 by Sheriff Officer.
- 15) The Respondent provided no evidence of payment of any part of the said unpaid rent of £14,360.

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 of £14,360 were due for the period to 2 August 2022 and remained outstanding as of today.
- 17) We were read the contents of the Respondent’s last communication (the email of 20 May 2022) which made various comments that could have been interpreted as defences: the rodent infestation, and being locked out of the Property. The former was not mentioned in the December 2021 and January 2022 correspondence when the Respondent offered full payment of the arrears then due. The Respondent took no steps to vindicate her position on the latter, such as retaking possession; instructing solicitors; or simply asking for a set of keys. We were satisfied to accept the *ex parte* statements that the Property had been left insecure by the Respondent and that the Applicants had offered a set of keys to the Respondent after making it secure. In the circumstances, we were satisfied to hold that the outstanding rent was due and was not being validly retained or withheld for any other reason.
- 18) Further, we accept the Applicants’ submission that the insurance cover has no relevance to their contractual right to seek payment, and nor does any separate contract with their insurer on recovery arrangements thereafter. Whether or not the Applicants may need to assign their rights under any order we grant does not alter their entitlement to seek the order for payment in the first place.

- 19) 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.
- 20) The 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 £14,360 against the Respondent with interest at 8% from today's date until payment, being an order restricted to sums due under the Tenancy in regard to rent up to 2 August 2022.

Decision

- 21) In all the circumstances, we were satisfied to make the decision to grant an order against the Respondent for payment of £14,360 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.

Joel Conn

16 March 2023

Legal Member/Chair

Date