



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 70(1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/21/2205**

**Re: Property at 24 Alexander Drive, Tillydrone, Aberdeen, AB24 2XE (“the Property”)**

**Parties:**

**Mrs Alison Iveson, The Rectory, 4 Waystead Close, Kingsmed, Northwich, Cheshire, CW9 8NN (“the Applicant”)**

**Mr Adeyinka Alase, 24 Alexander Drive, Tillydrone, Aberdeen, AB24 2XE (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Helen Barclay (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make no order**

**Background**

- 1 By application to the Tribunal the Applicant sought an order in the sum of £3893.15 against the Respondent in respect of unpaid rent arrears. In support of the application the Applicant submitted a rent statement up to 9 September 2021 and a copy of the tenancy agreement between the parties.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers from the Chamber President intimated that there were no grounds to reject the application. A Case Management Discussion was therefore assigned for 21<sup>st</sup> January 2022, to take place by teleconference.
- 3 A copy of the application paperwork together with the date and time of the Case Management Discussion and instructions for joining the teleconference was served upon the Respondent by Sheriff Officers.

## **The Case Management Discussion**

- 4 The Case Management Discussion took place on 21 January 2022. The Applicant was represented by Mr Stephen Barr, of Martin and Co. The Respondent, The Respondent was in attendance.
- 5 The Tribunal noted a dispute between the parties regarding a reduction in rent in November 2021 to £400 per month. The Applicant's position was that the reduction was only for the period of the Notice to Leave that had been served on the Respondent at that time, and the rent had reverted to the sum of £600 on 12 February 2021. The Respondent's position was that he had not been advised that the reduction was only until the 12<sup>th</sup> February and he had not been told that the rent had reverted to £600 until he received an email in October 2021.
- 6 The Tribunal therefore identified the issues to be resolved as:
  - (i) Was the reduction in rent from £600 to £400 in September 2020 restricted to a six month period in line with the Notice to Leave?
  - (ii) What is the current monthly rent for the property?
  - (iii) What arrears of rent are currently outstanding?
- 7 Having identified the issues to be resolved the Tribunal determined to fix a hearing in the matter. A Direction was issued to parties with timescales for lodging documents in advance of the hearing. Neither party indicated they would have any witnesses. The Tribunal advised that the Applicant would have to submit a request to amend the sum sought if she wished to seek to recover the sums that were alleged to have accrued since the application was lodged.
- 8 Following the Case Management Discussion the Respondent submitted via email on 10 March 2022 screenshots of three emails between himself and the Applicant's representative. Nothing was received from the Applicant.

## **The Hearing**

- 9 The hearing took place on 28 March 2022. The Applicant was represented again by Mr Stephen Barr, of Martin and Co. The Respondent was present.
- 10 As a preliminary point, the Tribunal noted the email of 10 March submitted by the Respondent, however noted that nothing had been received from the Applicant. Mr Barr advised that he had submitted documents on behalf of the Applicant, however he was unable to confirm when these had been sent to the Tribunal administration. He confirmed that the documents he had submitted were identical to those that the Respondent had produced, namely the three

email screenshots. The Tribunal therefore determined to proceed with the hearing, there being no prejudice to the Applicant.

### **Outstanding rent arrears**

- 11 The Tribunal heard firstly from the parties on the level of arrears that both stated were due. It was noted that this was restricted to the sum outstanding as at the date of the application, namely 9 September 2021, as no request to amend the sum sought had been put forward by the Applicant.
- 12 Mr Barr confirmed that the arrears now stood at £5,325.75. He noted the payment order previously granted by the Tribunal in March 2021 in the sum of £2,593.15 which related to arrears up to 12 March 2021. Deducting that from the current balance left a sum of £2,732.60. He noted however that the Applicant was restricted to claiming the sum outstanding as at the date of the application in the absence of any amendment. On that basis he sought the sum of £1300.
- 13 The Respondent confirmed that he had been paying the sum of £400 rent plus £100 since the previous payment order was granted. Accordingly he did not believe any arrears were due.

### **Rent reduction**

- 14 The Tribunal then heard from the parties on the circumstances surrounding the rent reduction, which was the primary focus of the dispute.
- 15 Mr Barr explained that a rent reduction had been agreed with the Respondent following the service of a six month Notice to Leave. The Respondent had asked for some help in paying the arrears as he was struggling financially. Mr Barr explained that the Applicant intended to sell the property. He had agreed to support the Respondent by reducing the rent to £400 per month. An email was sent to him to that effect on 23 November 2020, which formed part of the Respondent's submitted documents. The rent reduction was agreed in November 2020 and was to remain in place until the 11<sup>th</sup> February. However the Respondent did not vacate the property at the expiry of the Notice to Leave. Mr Barr explained that at that point nothing had been sent to the Respondent regarding the rent reverting to £600 per month. He stated that his office were not able to contact Mr Alase by any means, he was not responding to emails.
- 16 Following questions from the Tribunal, Mr Barr advised that his accounts department had continued to debit the rent account at the rate of £400 per month and this had only come to light in October 2021. The Respondent had been advised at that point. He conceded that he and his colleagues had not been aware that the rent was to revert to £600 per month in February. Accordingly no correspondence was sent to the Respondent between 4 March

2021 to 13 October 2021. The Respondent was not notified that his rent had reverted to £600 per month and he was not considered to be in arrears therefore this did not trigger any arrears notification procedures. The Respondent should however have been charged £600 per month under the tenancy agreement. Mr Barr advised that this had come to light after a discussion with himself, his manager and the company Director at the time of submitting the application to the Tribunal. In response to further questions from the Tribunal Mr Barr confirmed that his firm has a procedure for tenants in rent arrears and this had been followed in this case. Arrears are reviewed on a daily basis and staff try and contact tenants.

- 17 The Respondent referenced the email of 23 November 2020 from Martin and Co. He was not aware that the reduction was only until the 12 February 2021. He assumed it was an ongoing reduction until told otherwise. He confirmed that he had spoken to Martin and Co in November 2020 and had said he was struggling financially as a result of Covid. The reduction had been agreed, but it had not been clear that it was only for three months until February. It sounded as if there had been an error on the part of Martin and Co. They had not followed up to notify him that the rent had reverted to £600. Instead they had tried to apply this retroactively at a later date without communicating with him. The Respondent denied evading contact from Martin and Co. He had been in regular communication with them. He queried why there was reference to a six month reduction period, when the Applicant was claiming it was from November 2020 to February 2021.
- 18 The Respondent explained that he had been a good tenant, had always paid rent on time, but had lost his job due to Covid and had no recourse to public funds. He explained that he was now back at work, part time, and had been paying the £400 per month plus money to the arrears. He confirmed that he was the sole family member in employment, his partner looks after their three children. The Respondent advised that it would be unfair to apply the £600 per month retrospectively. This had occurred due to an error by the Applicant.
- 19 Mr Barr clarified that the six month period referred to in his evidence was in relation to the Notice to Leave, not the reduction agreed to. He was confused as to why the Respondent thought the rent reduction was indefinite. The Notice to Leave had asked him to vacate on 11 February 2021 and the email had referenced the remaining months of the tenancy. It made it clear and had also confirmed that the Applicant would not agree an extension as she was looking to sell the property. The Respondent then chose not to leave the property on 12 February. Mr Barr confirmed that there had been errors in the Notice to Leave which had meant a new Notice to Leave had to be served which expired on 11 March 2022. In response to questions from the Tribunal, Mr Barr conceded that the wording of the email could be interpreted by some to mean that the reduction would remain in place whilst the tenancy continued.

20 For the avoidance of doubt, the above is a summary of what was discussed at the hearing. It does not constitute a verbatim account of what transpired, but instead focuses on those matters relevant to the Tribunal's determination of the application.

### **Findings in Fact**

- 21 The Applicant and Respondent entered into a tenancy agreement dated 12 January 2017.
- 22 In terms of Clause 3 of the said Tenancy Agreement, the Respondent undertook to make payment of rent at the rate of £520 per month.
- 23 In August 2017, the rent was increased to £600 per month.
- 24 The Respondent fell into arrears of rent in April 2020, having lost his job during the coronavirus pandemic.
- 25 The Respondent fell into financial difficulty and approached the Applicant for support.
- 26 By email dated 23 November 2020, the Applicant's Representative, Martin and Co, agreed to reduce the rent to £400 per month.
- 27 On 29 March 2021, the First-tier Tribunal granted an order for payment in favour of the Applicant against the Respondent for arrears in the sum of £2,593.15 as at 12 March 2021.
- 28 Between 10 March 2021 and 24 August 2021 the Respondent made payments of £500 per month.
- 29 Neither the Applicant nor the Applicant's Representative notified the Respondent that his rent had reverted to £600 per month as at 12 February 2021.
- 30 Neither the Applicant nor the Applicant's Representative contacted the Respondent between 4 March 2021 and 13 October 2021 regarding rent arrears.
- 31 Between 10 March 2021 and 24 August 2021, the agreed rent for the property was £400 per month.
- 32 The Respondent owes no rent to the Applicant as at the date of lodging this application, having regard to the order granted by the Tribunal on 12 March 2021.

## Reasons for Decision

33 The Tribunal had sufficient information upon which to make a determination of the application, taking into account the application paperwork, the written representations from the parties and the evidence heard at the hearing.

34 The key consideration for the Tribunal was the agreed reduction in rent between the parties. The email sent to the Respondent by the Applicant's Representative on 23 November 2020 was in the following terms:

*"The landlord has agreed that the rent can be lowered to £400 for the remaining monthly payments and a further £200 towards your arrears, however, this £600 must be paid now for the period on the 12<sup>th</sup> of November – 11<sup>th</sup> of December as the due date for this period has passed.*

*The landlord has said that their intention remains to look to sell the property in February of 2021 and therefore will not be allowing an extension on your current lease. Your final date in the property remains the 12<sup>th</sup> of February."*

35 The Tribunal accepted that the terms of the email was open to interpretation and clearly both parties had a different view. The Tribunal therefore looked at the conduct of the parties in the aftermath of the expiry of the Notice to Leave.

36 The Applicant had not notified the Respondent that the rent had reverted to the contractual amount of £600 per month. By Mr Barr's admission, it was understood that the reduced rent of £400 had continued beyond the 12<sup>th</sup> February 2021. As a result, no correspondence was sent to the Respondent to alert him that his ongoing payments of £400, plus an additional £100 towards his arrears balance, were insufficient. The Respondent was therefore understandably of the view that he was complying with his ongoing obligation.


37 It was therefore clear to the Tribunal that the conduct of the parties in the period between 12 February 2021 and 9 September 2021 was indicative of a reduced rent of £400 being the agreement in place.

38 Having established that fact, the Tribunal therefore concluded that, taking into account the sum awarded by the First-tier Tribunal on 29 March 2021, there were no arrears due by the Respondent at the date of lodging this application.

39 The Tribunal would however observe that this application relates solely to arrears as at 9 September 2021, when this application was lodged. It is noted that the Applicant's Representative did advise the Respondent in October 2021 that the rent had returned to the contractual amount of £600 per month. The question of whether the rent has now reverted to £600 per month for the remainder of the tenancy will be a separate matter to determine, should the Applicant wish to pursue a further application to the Tribunal.

## 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.

  
Ruth O'Hare

28 March 2022

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Legal Member/Chair

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Date