



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/21/3120

Re: Property at 4 Bannercross Drive, Baillieston, Glasgow, G69 6PL (“the Property”)

Parties:

Ann Brady, Flat 0/1 164 Main Street, Baillieston, Glasgow, G69 6AH (“the Applicant”)

Alan Bain, whose present address is unknown (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

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 Procedure Rules”), namely an order for payment of rent arrears. The tenancy in question was a Private Residential Tenancy of the Property by the Applicant to the Respondent commencing on 13 December 2019.
- 2) The application was dated 30 November 2021 and lodged with the Tribunal on or around that date. The application was accompanied by a correspondence supporting arrears of £4,500, being six months unpaid rent of £750/m for rent due on 1 June to 1 November 2021 (for rent due 1 June to 30 November 2021). The lease for the tenancy accompanied the application and detailed a rental payment of £750 payable in advance on the 1st of each month (though with a complexity in regard to the first months of the Tenancy as I review below).

- 3) This matter called for an initial CMD on 12 May 2022 when, further to discussions with the Applicant's agent (the Respondent not being in attendance), the CMD was adjourned to 13 July 2022 to permit the Applicant to lodge a motion to amend, and provide submissions on an issue of interpretation of the rent payment clause in the Tenancy Agreement. These were both lodged by email on 26 May 2022, with a motion to amend to the sum of £5,129.05.
- 4) Further, I requested that both the Applicant's agent and the clerk send emails to an address for the Respondent within the Tenancy Agreement (with the motion and submissions, and a prompt to check the Service by Advertisement of the continued CMD, respectively). Evidence of these emails was provided to me. No contact from the Respondent, nor any new address for him, was held as at the commencement of the continued CMD of 13 July 2022.

The Hearing

- 5) On 13 July 2021, at a case management discussion ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote conference call at 10:00, I was addressed by Euan Forbes, solicitor, Aberdeen Considine for the Applicant. There was no appearance by the Respondent but prior to the CMD I was provided with a certificate of Service by Advertisement by the Tribunal's clerk and I was satisfied that such service had been completed.
- 6) As of 10:05, there was no appearance from the Respondent (that is, he did not call into the teleconferencing number, nor did he do so by the time the call concluded). The Applicant's agent confirmed that no contact had been received from the Respondent to his office. I was satisfied that the application papers and notification of the CMD had been served by advertisement on the Respondent and was thus satisfied to consider the application in full at the continued CMD in the absence of the Respondent.
- 7) The Applicant's representatives confirmed that the order for payment was still sought but in the amended amount of £5,129.05. The explanation of the figure was set out in the motion to amend, along with an updated statement of arrears, that had been lodged, and I obtained further clarification on points from the Applicant's agent.
- 8) The sum of £5,129.05 was made up as follows:
 - a) The Respondent vacated, and the Tenancy regarded as terminated, on 14 January 2022.
 - b) No rent had been paid since the rent due on 1 June 2021. This meant seven full months of rent (of £750/m) totalling £5,250 plus rent pro-rated for 1 to 14 January 2022. The Applicant calculated the pro-rated amount as £338.66. (My own calculation was that the figure should be £338.71 so I was willing to accept £338.66 as a reasonable pro-rated calculation.) The combined figure was £5,588.66.
 - c) Against this, the Applicant applied an overpayment of £459.61 in regard to the issue arising from the contractual interpretation of the rental payment

provision (which I discuss in detail below). This reduced the outstanding figure to £5,129.05 which they sought in the amendment.

- 9) The issue of contractual interpretation arose from the terms of clause 8 of the Tenancy Agreement which was discussed at the initial CMD. It was identified that the wording of the clause was not straight-forward:

The rent is £750 a calendar month in advance.

The first payment will be paid on 13/12/2019 and will be for the sum of £750 in respect of the period 13/12/2019 to 12/01/2020. ...

Thereafter payments of £750 must be received on the 1st of the month and then subsequently on or before the same date each calendar month thereafter. ...

The lease was therefore clear what the first rental payment was (£750), when it was due (13 December 2019), and what it covered (rent from the start of the Tenancy on 13 December 2019 to 12 January 2020). The lease was also clear that all further rental payments were due on the 1st of the month (which tied into the dates in the statement accompanying the application), that they remained £750, and that they were payments in advance (implying that whatever rental period they covered, it was a period starting no earlier than the 1st of the month). I sought submissions from the Applicant whether the Respondent was expected to have paid the rent due on 13 January 2020 by 1 January 2020 (and similarly early every month since); or the Respondent was not to be charged for rent for the period 13 to 31 January 2020 with the second rental payment under the Tenancy not to be paid until 1 February 2020 (covering the month of February 2020, and onwards on the 1st day of each month since); or some other treatment.

- 10) The Applicant's submissions were that the position could not be fully clarified but they would adopt a position favourable to the Respondent by accepting that a payment was made on 1 January 2020, but also that no rent was due for 13 to 31 January 2020. The Applicant proposed that this meant the Respondent had made an overpayment for the rent-free period of 13 to 31 January 2020 (being a pro-rated amount in their calculation at £459.61).
- 11) This does not, however, follow as if the Respondent paid £750 on 13 December 2019 to cover the month to 12 January 2020, and then a further £750 on 1 January 2020 to cover the month 1 to 31 January 2020, then the whole of the £750 paid on 1 January 2020 was overpaid. It either covered days already paid (1 to 12 January), or days that were rent free (13 to 31 January). A more likely interpretation is that 13 to 31 January was not to be rent-free and the payment of 1 January 2020 (which the Applicant concede was paid) double paid the period 1 to 12 January 2020 but nothing else. This would mean the overpayment was only £290.32. I noted, however, that the Applicant was offering to apply a higher credit of £459.61 and the Respondent was making no adverse comment.

- 12) The Applicant's representatives further explained that the deposit had been fully applied against a dilapidation issue at the Property, with nothing left to be applied against the arrears.
- 13) There was no interest rate in the Tenancy Agreement and the Applicant's agent sought 8% from the date of order. No motion was made for expenses.

Findings in Fact

- 14) On 13 December 2019, the Applicant let the Property to the Respondent by lease with a start date of 13 December 2019 under a Private Residential Tenancy ("the Tenancy").
- 15) Under the Tenancy, in terms of clause 8, after the initial payment of 13 December 2019, the Respondent was to make payment of £750 per month in rent to the Applicant in advance, being a payment by the 1st of each month to cover the month to follow.
- 16) The Respondent vacated the Property, and the Tenancy terminated, on 14 January 2022.
- 17) As of 14 January 2022, there was unpaid rent of £5,588.66 being seven full months of rent (of £750/m) of £5,250 from 1 June to 31 December 2021 and prorated for 1 to 14 January 2022 of £338.66.
- 18) The Applicant has applied a credit, in regard to overpayment of rent in January 2022, of £459.61 against the arrears.
- 19) On 30 November 2019, the Applicant raised proceedings against the Respondent for an order for payment of rent arrears of £4,500.
- 20) On 26 May 2022, the Applicant sought to amend the proceedings to seek an order for payment of rent arrears of £5,129.05.
- 21) The Respondent has been served a copy of the application and notification of the case management discussions by advertisement.
- 22) The Respondent provided no evidence of payment of any part of the said unpaid rent of £5,129.05.

Reasons for Decision

- 23) The application was in terms of rule 111, being an order for civil proceedings in relation to a PRT. I was satisfied, on the basis of the application and supporting papers, that rent arrears of at least £5,129.05 were outstanding as of today for the rent due to 14 January 2022 and that the Applicant was satisfied to restrict liability in arrears to that amount.

24) The application clearly set out the sums and I have expressed my confusion at part of the calculation but, on the basis of the uncontradicted statement of the Applicant's agent, I was satisfied that the sum sought in rent was reasonable and that the necessary level of evidence for these civil proceedings had been provided. No dispute was stated by or on behalf of the Respondent. The Procedure 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. I was thus satisfied to make a decision at the CMD to award the sum of £5,129.05 against the Respondent with interest at 8% from today's date until payment.

Decision

25) In all the circumstances, I was satisfied to make the decision to grant an order against the Respondent for payment of £5,129.05 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

13 July 2022

Legal Member/Chair

Date