



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/CV/23/0469

Re: Property at 40A Stewarton Street, Wishaw, ML2 8AN (“the Property”)

Parties:

Mr Jen Yu Yeung, 6 Carousel Crescent, Wishaw, ML2 7ER (“the Applicant”)

**Mr Barry Douglas Barrett, Ms Lynnette Muldoon, 40A Stewarton Street,
Wishaw, ML2 8AN (“the Respondents”)**

Tribunal Members:

Virgil Crawford (Legal Member) and Melanie Booth (Ordinary Member)

Decision (in absence of the Respondents)

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

BACKGROUND

1. By lease dated 2nd September 2019 the Applicant let the Property to the Respondents. The lease purported to be a short assured tenancy but, having regard to the date of execution, fell to be regarded as a private residential tenancy agreement.
2. The rent payable in terms of the Lease was £380.00 per calendar month payable monthly and in advance.
3. The Respondents fell into arrears during March 2020. Four rental payments were missed, those being for March, April, May and June 2020. Rental payments were thereafter made from July until November 2020 but thereafter no rental payments have been made whatsoever.

4. On 16th December 2022 the Applicant served a notice to leave upon the Respondents. As at the date of the Notice to Leave, the rent arrears amounted to £11,020.00.
5. A notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the local authority.
6. On 13th February 2023 the Applicant presented two separate applications to the Tribunal, one seeking an order for eviction (EV/23/0466) and another seeking an order for payment of rent arrears (CV/23/0469).
7. As at the date of the application to the Tribunal, the arrears of rent amounted to £11,780.00.
8. A case management discussion was assigned for each case to call on 19th May 2023. Prior to that, on the basis that no further rental payments had been made, the Applicant applied to the Tribunal to vary the amount claimed to an amount of £12,920.00.

THE CASE MANAGEMENT DISCUSSION

9. The Applicant was represented by Miss Donnelly of Messrs T C Young, Solicitors, Glasgow. The Respondents did not participate in the case management discussion. The Tribunal, however, was in receipt of certificates of intimation by Sheriff Officers confirming that the proceedings had been intimated upon the Respondents. In the circumstances, the Tribunal was satisfied in terms of Rule 24 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the FTT Regs”) that the respondents had received intimation of the date and time of the Case Management Discussion and considered that it was appropriate to proceed with the Case Management Discussion in the absence of the Respondents in accordance with Rule 29 of the FTT regs.
10. Miss Donnelly moved the Tribunal to amend the amount claimed to the sum of £12,920.00. An updated rent statement had been provided to the Tribunal showing that amount outstanding. The Tribunal, in terms of Rule 14A of the FTT Regs, allowed that amendment.
11. Given there was no appearance by the Respondents and, as a result, no opposition to that order being made, the Tribunal made a payment order in the sum of £12,920.00.
12. The Applicant, in her application to the Tribunal, and at the Case Management Discussion, asked for payment of interest on the amount outstanding. The Applicant sought interest at the rate of 8 per cent per annum. The Tribunal was not willing to make an order for payment of interest in that amount. The Tribunal noted that the current RBS Bank base lending rate is 4.5%. Any borrowings from a bank, however, generally attract an interest rate higher than the base lending rate. Having regard to that, the

Tribunal made an order for payment of interest on the amount due at the rate of 5% per annum.

13. The Applicant sought an order for eviction on the basis of substantial rent arrears, that being a ground of eviction in terms of Ground 12A of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016. It was noted that the arrears of rent were equivalent to 34 monthly rental payments.

14. The Tribunal made enquiry of the Applicant's representative in relation to the personal circumstances of the Respondents. The information provided was as follows:-

- a) Both Respondents are believed to be "in their 40's" in terms of age;
- b) Both are believed to still remain within the Property, despite being aware of the arrears of rent;
- c) The Second Respondent, Lynette Muldoon, is believed to be in employment;
- d) Both Respondents were contacted in January of this year (2023) with a view to discussing the arrears of rent and their status within the Property. The arrears of rent were acknowledged by the Respondents;
- e) At that time, the Respondents intimated to the Applicant that they had, as they understood it, until April 2023 to vacate the premises. Despite that, however, they remain within the premises as at the date of the case management discussion on 19th May 2023;
- f) Prior to the discussion between the Applicant and the Respondents in January 2023, the issue of rent arrears had been raised as far back as 2021. That discussion took place via a Whatsapp exchange;
- g) At that time the Respondents advised they had sourced alternative accommodation and intended moving out of the Property. They did not do so;
- h) The Applicant thereafter instructed a letting agent to deal with the matter in the hope that the letting agent would have success in resolving the matter satisfactorily. That, however, did not turn out to be fruitful;
- i) The Applicant thereafter instructed her current agents and, following the discussion in January 2023 the current proceedings were initiated;
- j) The Applicant is not aware of any health concerns or issues affecting either Respondent;
- k) The Applicant is not aware of the Respondents having any children, and certainly no children within the Property.

15. In the circumstances, there being no appearance by the Respondents and no opposition to the eviction and there being no information before the Tribunal to enable it to conclude that it was anything other than reasonable to grant an order for eviction, the Tribunal granted such an order;

FINDINGS IN FACT

16. The Tribunal found the following facts to be established:-

- a) By lease dated 2nd September 2019 the Applicant let the Property to the Respondents.
- b) The rent payable in terms of the Lease was £380.00 per calendar month payable monthly and in advance.
- c) The Respondents fell into arrears during March 2020. Four rental payments were missed, those being for March, April, May and June 2020. Rental payments were thereafter made from July until November 2020 but thereafter no rental payments have been made whatsoever.
- d) On 16th December 2022 the Applicant served a notice to leave upon the Respondents. As at the date of the Notice to Leave, the rent arrears amounted to £11,020.00.
- e) A notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the local authority.
- f) As at the date of the application to the Tribunal, the arrears of rent amounted to £11,780.00.
- g) As at the date of the Case Management Discussion rent arrears amounted to £12,920.00.
- h) The sum of £12,920.00 is due, resting and owing by the Respondents to the Applicant.
- i) The arrears of rent are substantial, being equivalent to 34 monthly rental payments.
- j) No rent had been paid for a continuous period of 30 months.
- k) It is reasonable in the circumstances that an order for eviction be granted.

REASONS FOR DECISION

17. In relation to the arrears of rent, a rent statement had been provided to the Tribunal showing that no rent payments had been made since December 2020 and there had been four payments missed prior to that also. As at the date of the Tribunal, the amount outstanding was £12,920.00. That sum was due by the Respondents to the Applicant and it was appropriate that the Tribunal made an order for payment.
18. In relation to an order for eviction, the arrears of rent in this case were, indeed, substantial. The arrears of rent equated to almost 3 years of rental payments. The Respondents, as at the date of the Case Management Discussion, had made no rental payments whatsoever for a period of 2½ years. There can be no basis upon which the Respondents could believe anything other than that they were in substantial arrears of rent.
19. Given the level of the arrears and the fact that no representations had been made to the Tribunal by or on behalf of the Respondents, the Tribunal concluded that it may be appropriate to grant an order for eviction.
20. The Tribunal, however, did make enquiry to enable it, as far as it could, to consider the issue of reasonableness. On the basis of the information provided, the Tribunal had no difficulty in concluding that it was reasonable to

grant an order for eviction having regard to the level of rent arrears and the absence of any information relating to the Respondents to suggest that it would in any way be unreasonable to grant an order for eviction.

DECISION

The Tribunal granted an order against the Respondents for payment of the sum of TWELVE THOUSAND NINE HUNDRED AND TWENTY POUNDS (£12,920.00) STERLING to the Applicant with Interest thereon at the rate of five per cent per annum running from 19 May 2023 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.

Virgil Crawford

19 May 2023

Legal Member/Chair

Date