



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Rule 111 of the First-tier Tribunal for
Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the
Regulations”)**

Chamber Ref: FTS/HPC/CV/22/1672

Re: Property at 16 Hawthorn Way, Cambuslang, G72 7AF (“the Property”)

Parties:

Mr Richard Russell, 34 2/4 Main Street, Cambuslang, Glasgow, G72 7ER (“the Applicant”)

Mr David Hutcheson, 16 Hawthorn Way, Cambuslang, G72 7AF (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Ahsan Khan (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 by the Respondent in the sum of £8,450 should be made in favour of the Applicant.

Background

1. By application received 30 May 2022, the Applicant sought a payment order against the Respondent in the sum of £8,450 in respect of rent arrears. Supporting documentation was submitted with the application, including a copy of the tenancy agreement and a payment schedule.
2. The application was subsequently accepted by a Legal Member of the Tribunal acting with delegated powers from the Chamber President who issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations on 14 June 2022. Notification of the application was made to the Respondent and the date, time and arrangements for a Case Management Discussion (“CMD”) were intimated to both parties, advising of the date by which any written representations should be lodged (13 August 2022). Said notification was

served on the Respondent personally by Sheriff Officer on 26 July 2022. No written representations were lodged by the Respondent.

3. By email on 22 August 2022, the Applicant's agent submitted an application to amend both this Application and the conjoined eviction application (FTS/HPC/EV/22/1671) and lodging a Second Inventory of Productions which was applicable to both applications. The amendment in terms of this Application included an amendment to increase the sum sued for from £8,450 to £14,850. The Tribunal Administration circulated this paperwork to the Respondent by post on 23 August 2022.

Case Management Discussion

1. A Case Management Discussion ("CMD") took place by telephone conference call on 29 August 2022 at 10am, attended by Ms Jennifer Grosvenor, Solicitor for the Applicant from Harper Macleod LLP. The commencement of the CMD was delayed for 5 minutes to allow an opportunity for the Respondent to join late but he did not do so.
2. After introductions and introductory remarks by the Legal Member, Ms Grosvenor was asked to address the Tribunal on the preliminary issue regarding the application for amendment to increase the sum sought which appeared to the Tribunal to have been submitted late in terms of Rule 14A of the Regulations. Ms Grosvenor conceded that that part of the application to amend was late and that, due to an administrative error, this had been diaried for 7 days before the CMD rather than 14. Nor had they intimated the amendment directly to the Respondent in terms of Rule 14A. Ms Grosvenor asked the Tribunal to consider allowing the late amendment with reference to the background circumstances and having regard to the overarching discretion of the Tribunal to deal with matters justly. She referred to the fact that the Respondent has not made any rental payments since December 2021, that communications have been sent to him regarding the level of arrears and that none of this should therefore be a surprise to him. The Applicant is faced with substantial rent arrears owing and in her submission, it would be prejudicial to him if the amendment is not allowed. However, she conceded that she was in the Tribunal's hands and that, if the amendment is not permitted, she would still wish to proceed with trying to get a payment order today in terms of the original sum sought. Ms Grosvenor considered that the Second Inventory of Productions and other aspects of the amendment which sought to amend their written representations only required 7 days' notice prior to today's CMD in terms of the Regulations and requested that the Tribunal allow those.
3. The Tribunal adjourned briefly to discuss this preliminary matter. On re-convening, the Legal Member advised Ms Grosvenor that the Tribunal had determined that the amendment to increase the sum claimed had not been made in accordance with Rule 14A and should not therefore be permitted. The other amendments to the Applicant's representations and the Second Inventory of Productions were allowed. The Legal Member indicated that, if the Applicant wished to proceed with this Application and seek the increased payment order, the Tribunal would continue the Application to a further CMD to allow proper

intimation to the Respondent to be made. However, Ms Grosvenor reiterated that the Applicant would prefer to seek an order in the original sum today.

4. Ms Grosvenor was asked to address the Application and she also answered some questions from the Tribunal Members. She referred to the tenancy agreement and the rent schedule lodged. The rent in terms of the tenancy is £1,600 per month, payable 2-monthly in advance. Some payments made by the Respondent had been only part-payments and then no payments at all had been made towards rent since December 2021. There had been no explanation from the Respondent, nor proposals for resolving the situation, despite the Applicant's attempts to discuss matters with him. The Applicant has confirmed that no further payments have been made to those shown on the rent schedule. The Respondent had made no direct contact with Ms Grosvenor's firm. The Applicant had advised that he received an email dated 10 July 2022 from the Respondent but that this made no mention of the rent arrears. It raised an issue concerning the washing machine and the Respondent also advised that the completion date for his new house was 8 August 2022. As far as they are aware, the Respondent is still resident at the Property. Ms Grosvenor confirmed that the arrears outstanding in terms of the Application are significant and continuing to accrue. She moved the Tribunal to grant a payment order in the sum of £8,450 in terms of the original Application and submitted that it was reasonable for this to be granted today.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 13 February 2021.
3. The rent due in respect of the tenancy is £1,600 per month, payable two-monthly in advance.
4. The rent was initially paid regularly but then payments made in August and November 2021 were both short.
5. The last payment towards rent was £1,600 made in December 2021 and no payments have been made since.
6. The Applicant contacted the Respondent about the arrears but was not given any explanation, nor any proposals for paying the arrears.
7. The Respondent remains in occupation of the Property.
8. The rent arrears outstanding when this Application was submitted to the Tribunal amounted to £8,450, although are now considerably higher.
9. The Respondent has not submitted any written representations, nor sought time to pay, in respect of this application. The Respondent did not attend the CMD.

10. The sum of £8,450 is due and resting owing by the Respondent to the Applicant in respect of rent arrears incurred during the tenancy in terms of this Application and has not been paid by the Respondent.

Reasons for Decision

1. The Tribunal considered all of the background papers, including the application and supporting documentation and the oral submissions made by the Applicant's representative at the CMD. The Tribunal noted that no representations had been made by the Respondent and that he did not attend the CMD, having been properly and timeously notified of same. The Tribunal considered that there was nothing to contradict the information from the Applicant and therefore no requirement to continue the application to an Evidential Hearing. The Tribunal was satisfied that, in the circumstances, a payment order in terms of the application could properly be made at the CMD.
2. The Tribunal was satisfied from the information before them that the sum of £8,450 in unpaid rent is due and resting owing by the Respondent in terms of this Application and that an order for payment in that sum should accordingly be made.
3. The Tribunal was aware from the information before it that further rent arrears had accrued since this Application was submitted but had determined (as above detailed) that the amendment sought to the Application to increase the sum claimed should not be permitted at the CMD.

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.



Legal Member/Chair

29 August 2022
Date