



Statement of Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16, Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/18/3469

Re: Property at 9 Randolph Lane, Edinburgh, EH3 7TD (“the Property”)

Parties

Ms Betty Thompson and Mr William Thopson, Flat 25, Heversham House, Ilderton Road, London, SE15 1EL (“the Applicant”)

Ms Lee-Ann Falconer, 9 Randolph Lane, Edinburgh, EH3 7TD (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent is in breach of the tenancy agreement with the Applicant and has failed to pay rent. The Tribunal accordingly has decided to make an order for payment in the sum of NINETEEN THOUSAND TWO HUNDRED AND SIXTY-FIVE POUNDS (£19 265) STERLING. **The order for payment will be issued to the Applicant after expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.**

Background

1. By application dated 17 December 2018 the First Named Applicant applied to the First- tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for payment of rent arrears against the Respondent relating to a tenancy at 9 Randolph Lane, Edinburgh, EH3 7TD (“the Property”). The First Named Applicant explained that the Property was managed by her mother Fiona Duff and owned by her and her brother.

2. On 11 January 2019, the Tribunal sought written confirmation from the First Named Applicant that William Thompson the joint owner consented to the application. On 14 January 2019, Fiona Duff forwarded an undated letter addressed to the Tribunal from William Thompson confirming he supported the Application.
3. On 29 January 2019, the Tribunal made further enquiries as to whether Fiona Duff wished to be a co-applicant and whether William Thompson formally sought to become a co-applicant and enquiring whether the application had to be amended. On 30 January 2019, the Tribunal received a letter from both Applicants seeking to amend the Application to have them noted as the Landlord and to have Fiona Duff treated as a representative of the Landlords only. On 4 March 2019, the Tribunal received a letter from Messrs Lindsays, Solicitors intimating that they were now representing the Applicants in place of Fiona Duff.
4. On 12 March 2019 the Tribunal sought the contact details of the Second Named Applicant. This was received by way of email on 19 March 2019.
5. On 22 March 2019, the Tribunal accepted the application under Rule 9 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations").
6. On 13 April 2019, the Tribunal enclosed a copy of the application to both parties and invited the Respondent to make written representations to the application by 1 May 2019. The Tribunal also advised both parties that a Case Management Discussion under Rule 17 of the Regulations would proceed on 14 May 2019. This paperwork was served on the Respondent by Grant Lumsden, Sheriff Officer, Livingston at her new address on 15 April 2019 after receiving confirmation from the Respondent of her new address. The certificate of execution of service was received by the Tribunal.
7. The Respondent did not make any written representations by 1 May 2019.

Case Management Discussion

8. The Tribunal proceeded with the Case Management Discussion on 14 May 2019. The Applicant was represented by Mr Gardiner from Lindsays, solicitors. He was accompanied by Fiona Duff, the Applicants' mother and a colleague Ms Connely. The Respondent appeared personally.
9. The Tribunal had before it a Short Assured Tenancy Agreement naming Fiona Duff as the Landlord with the Respondent named as the tenant ("the tenancy agreement"). The tenancy agreement commenced on 8 October 2016. It was

unsigned and undated. The Tribunal also had before it a rent statement to December 2018 showing how arrears of £15365 had accrued from the commencement of the tenancy agreement to December 2018. The Tribunal also had a copy current account statement to March 2019, 12 pages of emails between the First Named Applicant and the Applicant dated between 5 August – 10 September 2018 and 27 pages of a What's App conversation between Fiona Duff and the Respondent between 22 January 2018 – 15 December 2018. The Applicant's solicitor had also lodged a photograph of a letter, the contents of which was not clear.

10. Mr Gardiner explained to the Tribunal that in terms of Clause 2 of the Short Assured Tenancy Agreement, the Respondent agreed to pay monthly rent of £1300. At the point of lodging the application with the Tribunal the arrears were £15 365. He explained the arrears had increased to £19 265. In the circumstances, Mr Gardiner sought to amend the sum to £19 265 and asked for an order in the increased sum of arrears of £19 265. The Tribunal referred him to the original rent statement and noted that on the up to date rent statement there were another 5 months' rent included of £1300. It also noted the last payment to account was for £1300 on 28 September 2018. The Tribunal was aware that the Respondent had moved from the Property and Mr Gardiner confirmed that she had done so on 7 April 2019.
- 11 In response, the Respondent admitted that she had fallen into the arrears and that she wanted to resolve matters. Mr Gardiner then referred to the letter which was already before the Tribunal in the form of a photograph and passed over a copy of the letter. This was a letter dated and signed by the Applicant's mother Fiona Duff and the Respondent on 7 April 2019 in which the Respondent admitted the arrears of £19265. The Respondent confirmed this.

Findings In Fact

12. The Applicants and the Respondent agreed by way of a Short Assured Tenancy Agreement in relation to the Property that the Respondent would pay the Applicant a calendar monthly rent of £1300 commencing on 8 October 2016.
13. The Respondent has fallen into arrears of rent. The last payment to account was on 28 September 2018 when £1300 was paid. The Respondent has made no payments of rent since.
14. The Respondent moved out of the Property on 7 April 2019 by which stage the arrears had increased to £19 265.

15. The Respondent admitted the arrears in the sum of £19265 in a letter signed and dated 7 April 2019.

Reasons For Decision

16. In terms of Rule 13 (1) (b) of the Regulations, the Tribunal being satisfied that there was no prejudice to the Respondent, was prepared to allow the Applicant to amend the sum sought to the higher arrears figure of £19265 as shown in the up to date rent statement produced. The Applicant provided evidence of non-payment of rent in the form of the rent statement and tenancy agreement. The Tribunal took into account the Respondent admitted the arrears sum of £19265. The Tribunal was satisfied that the Respondent was in arrears of rent of that sum.

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.

S Evans

Shirley Evans
Legal Member/Chair

14 May 2019
Date