



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) Act 2016

Chamber Ref: FTS/HPC/CV/20/0532

Re: Property at Flat 18, 5 Simpson Loan, Edinburgh, EH3 9GX (“the Property”)

Parties:

Mr Bernt Lie, Mr Hong Lie, Olav T 18, 3125, TBG, Norway (“the Applicant”)

Mr Aaron Cummings, Flat 18, 5 Simpson Loan, Edinburgh, EH3 9GL and Mr Wilson Wishart, 37 Riverside Road, Edinburgh, EH12 5QY (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondent)

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

Background

1. An application was made to 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 2017 Rules”) seeking an order for payment in relation to unpaid rent.
2. The application contained:-
 - a copy of the tenancy agreement
 - rental statement
 - amendment of the rental payment date
3. The Applicant’s agent had submitted further paperwork in support of this application, namely updated rent statement; and copies of email correspondence to the Respondents notifying them of the current rent arrears

due and advising them that they would be seeking to amend the sum sought to include further arrears outstanding as at the date of today's case management discussion.

4. A case management discussion (CMD) had taken place on 21 August 2020, reference is made to the terms of the CMD note produced.
5. At today's case management discussion Mr Riddell from Umega Lettings, together with his supporter, Ms Moore appeared for the Applicants. There was no appearance by either Respondent. I was satisfied that both Respondents had had notice of today's case management discussion and I was therefore prepared to proceed with the case management discussion in their absence.

Discussion

6. The Applicant advised that the rent arrears were still outstanding and had in fact increased. A further month's rent for October 2020 was now also due. The last full month's rent which had been paid was in September 2019. Other than two very minor payments totalling around £50 made in December 2019 there had been no further payments since that date.
7. The first Respondent had not terminated the tenancy agreement and rent arrears continued to accrue. An application had been made to the Tribunal to progress eviction proceedings to end the tenancy and recover the property. These had not concluded.
8. The Applicants' agents advised that they had made numerous attempts to contact both the Tenant and the Guarantor to seek repayment of the rent arrears. The Guarantor had made any contact with them at all. The Tenant had made some contact during May until August 2020, advising that he had no proposals to make, and he had no money due to the covid pandemic. There had been no further contact from the Tenant since August 2020.
9. The Applicants' agent advised that the rent arrears were still outstanding. They were currently £25,633.29 as at today's date. The Applicant had submitted an updated rent statement. The Applicant sought an order for this sum.

Findings in Fact

10. The Tribunal found the following facts to be established:
11. A tenancy agreement was entered into between the Applicant and the first Respondent for the property. It commenced on 28 August 2019.
12. That the second Respondent was a Guarantor for the first Respondent. That the second Respondent was also therefore a party to the tenancy agreement.
13. Clause 8 in the tenancy agreement provided that monthly rent was £2,100.

14. The rent account statement showed amounts due each month, amounts received, and rent outstanding and showed arrears as at 3 October 2020.
15. That the first Respondent had been not made any payments towards the arrears since September 2019.
16. That rent arrears in respect of the property up to 2 October 2020 totalled £23,533.29.
17. Clause 48 of the tenancy agreement sets out the obligations relating to the Guarantor; including that by signing the agreement he guarantees all payments of rent; and that he is jointly and severally liable for all costs payable by the Tenant in terms of the Agreement.

Reasons for Decision

18. Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 provides that the First Tier Tribunal has jurisdiction in relation to civil proceedings arising from private residential tenancies.
19. As this tenancy is a private residential tenancy, I am content that I have jurisdiction to deal with this case.
20. The tenancy agreement created obligations between the parties; one of those obligations was to pay rent, the first Respondent had failed to do so; and the second Respondent as guarantor had also failed to do so.
21. Neither Respondent appeared at today's CMD.
22. The second Respondent had previously contacted the tribunal office to advise that he had been sequestered at the end of the last year. It is presumed that he considers that he was not therefore liable to the arrears. Evidence to confirm his sequestration was requested from him however it was not forthcoming. Accordingly, I do not consider that I am able to, and have not, taken this assertion into account in determining this matter.
23. The Applicants' agents sought payment of rent due as of 3 October 2020, which would include the monthly rent including up to 2 November. As rent is paid in advance, I do not consider that this month's rent is owing as at today's date. I am prepared to amend the sum sought to rent due up to the 2 October 2020, which sum is £23,533.29.
24. The Applicant's agents advised that they had contacted the Respondents on numerous occasions to seek repayment of the rent. All attempts have been unsuccessful.

25. Based on the evidence submitted and having regard to all papers submitted including the application, I consider that I should make a payment order of £23,533.29.

Decision

26. I grant an order in favour of the Applicants for the Sum of TWENTY-THREE THOUSAND FIVE HUNDRED AND THIRTY-THREE POUNDS TWENTY-NINE PENCE (£23,533.29) STERLING against the Respondents.

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.

Melanie Barbour

7 October 2020

Legal Member/Chair

Date