



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 70(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/20/1530

Re: Property at 26/6 Craighouse Gardens, Edinburgh, EH10 5TY (“the Property”)

Parties:

Mr Ian Chesser, 14 Forthview Crescent, Currie, Edinburgh, EH14 5QZ (“the Applicant”)

Mr Paul Fletcher, 26/6 Craighouse Gardens, Edinburgh, EH10 5TY (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order in the sum of Four thousand eight hundred and eighty pounds (£4,880) Sterling

Background

- 1 By application dated 16th July 2020 the Applicant sought an order for payment of rent arrears against the Respondent in the sum of £3,820. In support of the application the Applicant provided a copy Tenancy Agreement, Rent Statement, Bank Statements and Statement from the Applicant’s Solicitor.
- 2 By Notice of Acceptance of Application dated 10 August 2020 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 18th September 2020.

- 3 Due to the imposition of restrictions in response to the Covid-19 pandemic the Case Management Discussion was scheduled to take place by tele-conference. A copy of the application paperwork together with the date and time of the Case Management Discussion and instructions on how to join the tele-conference was served upon the Respondent personally by Sheriff Officers on 25th August 2020.
- 4 By email dated 1st September 2020, the Applicant provided an up to date rent statement and confirmed that the arrears had increased to the sum of £4,880 as at 1st September 2020.

The Case Management Discussion

- 5 The Case Management Discussion took place on 14 August 2020 by teleconference. The Applicant, Mr Ian Chesser, was in attendance.
- 6 Having noted that the application paperwork had been served personally on the Respondent by Sheriff Officers, the Legal Member determined to proceed with the Case Management Discussion in her absence having been satisfied that he had received proper notification of the date, time and procedures for joining the tele-conference. The Legal Member further accepted the Applicant's email as an application to amend the sum claimed to £4,880 which had been made timeously under Rule 13 of the First-tier Tribunal (Housing and Property Chamber) Rules of Procedure 2017 and intimated to the Respondent. On that basis the Legal Member agreed to amend the application to reflect the figure of £4,880.
- 7 Mr Chesser proceeded to give a comprehensive account of the background to the application, explaining that he had inherited the property from his mother. The Respondent had initially paid the rent but had stopped in 2018. The arrears had steadily increased since then, despite attempts by Mr Chesser to assist the Respondent. The Respondent had given varying and inconsistent accounts of his financial and personal circumstances, and the reasons why he had failed to make payment of rent. Mr Chesser's solicitor had written to him on two occasions requesting payment proposals but he had failed to respond. The last contact Mr Chesser had with him had been by text on 21st August, at which point he had stated he was in employment at a golf club and in receipt of universal credit, therefore Mr Chesser could expect payment directly from the Department of Work and Pensions. This had not transpired and there had been no further contact. Mr Chesser explained the impact the situation was having on him and his family, both personally in terms of their health and financially.
- 8 It subsequently transpired that Mr Chesser believed that he had in fact submitted an application for repossession of the property to the Tribunal. The Legal Member explained that the only application she had before her was an

application for payment of the outstanding rent arrears. Accordingly the Legal Member advised that she could only determine that application and that Mr Chesser should take advice on his position regarding any eviction application he wished to pursue against the Respondent.

Findings in Fact and Law

- 9 The parties entered into a Short Assured Tenancy Agreement in respect of the property which commenced on 30 October 2015.
- 10 In terms of Clause 6 of the said Tenancy Agreement the Respondent has a contractual obligation to pay rent at the rate of £530 per month.
- 11 In June 2019 rent arrears began accruing due to the Respondent's failure to make payment of the contractual rent.
- 12 The last payment of rent made by the Respondent to the Applicant was the sum of £350 on 27th April 2020.
- 13 As at 1st September 2020 arrears in the sum of £4,880 are outstanding due to the Respondent's persistent failure to make payment of the contractual rent.
- 14 The Respondent is therefore liable for payment of the said sum of £4,880 to the Applicant in terms of the Tenancy Agreement between the parties.

Reasons for Decision

- 15 The Tribunal was satisfied that the Respondent had received proper notification of the application and the Case Management Discussion. The Tribunal therefore considered it was able to continue with the Case Management Discussion in the absence of the Respondent. The Tribunal was further satisfied that it was able to make a determination of the application at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties.
- 16 Having considered the terms of the tenancy agreement and rent statement produced by the Applicant, and based on its findings in fact, the Tribunal was satisfied that the Respondent was liable to pay the sum of £4,880. The Tribunal accepted the evidence of the Applicant that the Respondent had a contractual obligation to make payment of rent at the rate of £530 per month. The Respondent had not sought to dispute the terms of the application and there was no evidence before the Tribunal to contradict the position put forward on behalf of the Applicant. The Tribunal therefore made an order for payment against the Respondent.

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.

Ruth O'Hare



18th September 2020

Legal Member/Chair

Date