



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/20/1950

Re: Property at St Nicholas Mews, 41L Ayr Road, Prestwick, KA9 1SY (“the Property”)

Parties:

Mr Iain King, Mrs Susan King, 1 Trehaverne Place, Truro, Cornwall, TR1 3RS; 3 Kew Lastanen, Tinney Drive, Truro, TR1 1FP (“the Applicant”)

Mr Reece Coleman, Unknown, Unknown (“the Respondent”)

Tribunal Members:

Jan Todd (Legal 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 be granted.

Background

1. This was the second case management discussion (CMD) scheduled to take place at 10am on 2nd March 2021 by teleconference, to consider the application made by the Applicant Mr Iain King and Mrs Susan King for an order for payment of £2107.85 representing rent arrears they are claiming from the Respondent, Mr Reece Coleman. The application narrates the Respondent was a tenant in the Property until 31st January 2020.
2. The Application had been lodged on 14th September 2020 by Rentolease Property Management and the following papers were lodged with the application:-
 - a. Copy of the Tenancy Agreement between the Applicant and Respondent which commenced on 31st January 2019.
 - b. A Schedule of rent payments to 31st January 2020
 - c. Letter by Mrs Susan King confirming she is the joint owner of the Property and that she consents to the raising of the application
3. The Tribunal also has sight of Land Certificate showing that the Property was owned by the Applicant at the time of the lease.

4. The Applicants agent was Rentolease Property Management Ltd in Prestwick who entered into various correspondences with the Tribunal Administration with regard to the Application and in particular with regard to the address and application for service by advertisement on the Respondent when it became clear the address given was not the Respondent's current address, which remains unknown.
5. The Application was accepted by a legal member of the Tribunal on 11th November 2020 and this was intimated by letter to Rentolease Property Management Ltd on 13th November 2020. On 2nd December 2020 Rentolease Property Management were invited and sent details of the first CMD which was held on 11th January 2021. At that CMD neither the Agents for the Applicant, the Applicant or the Respondent attended. Service had been intimated on the Respondent by Advertisement on the Tribunal's website from 2nd December 2020.
6. After the Tribunal made enquiries, the Agent for the Applicant advised the Tribunal that they were no longer acting for the Applicants and had passed the conference call details to Mr King. They had thought that Mr King would dial in to the CMD. As neither Mr King nor Mrs King had attended and as the Agents had not intimated their withdrawal to the Housing and Property Tribunal prior to the calling of the first CMD and therefore neither Mr or Mrs King have been individually sent intimation of the details of the CMD by the Tribunal administration, the Tribunal determined that it was only fair that the CMD was continued to allow Mr King and Mrs King to be given a chance to appear at an adjourned CMD to state their position.
7. Mr King and Mrs King were contacted by e-mail to advise of the outcome of the CMD and Mr King replied on 12th January by e-mail confirming that he did wish to proceed with the reclaiming of rent owed and would be happy to conduct the CMD via teleconference. He also advised he had copied in his ex-wife Mrs King.
8. Both applicant s were sent details of the teleconference and how to dial in by letter sent by e-mail on 26th January 2021.
9. Service on the Respondent was again intimated by service by advertisement on the Tribunal's website from 26th January 2021.

The Discussion

1. The CMD proceeded today by way of teleconference due to the continued requirement at the current time for social distancing. The Convener made introductions, and explained how the CMD would be conducted over the teleconference. Both Applicants attended neither was represented.
2. The Respondent did not attend nor was he represented on the teleconference. The Tribunal was satisfied that the Respondent has been given fair notice of the CMD by service by advertisement and the Tribunal therefore felt it was appropriate and fair to continue in his absence.
3. Mr King and Mrs King confirmed Mr King would do most of the talking and Mr King advised that within the last month and half they have sold the Property and that they did not realise that during the lease of the Property to the Respondent they had used Rentolease as their agent it is only recently they have stopped being the landlords agent.

4. Mr King advised that the Property had been rented to the Respondent from January 2019 to 31st January 2020, that at one point during 2019 the Respondent had fallen into arrears of rent and their agent was about to issue a Notice to Leave when he paid the arrears. The Legal Member enquired if that was around May to September 2019 as the arrears could be seen on the rent statement. Mr King agreed this would be the case.
5. He then advised that the Applicant had phoned the agent to check prior to this CMD what the arrears were and were told they were £2400. The legal member drew the applicant's attention to the rent statement lodged with the application which shows that rent was not paid from 30th September 2019 to 31st January 2020 amounting to £2780. Mrs King then confirmed that she could see the rent statement from the papers she had and agreed that would be correct. Mr King also confirmed that their agent had advised that after 3 months' rent was due they could then issue a notice to leave to the tenant and this is what they did at the beginning of January 2020. He confirmed that they relied on their agent to deal with these matters and advise them both as they lived in Cornwall. Mrs King also confirmed that she thought the Respondent may have left in December but it wasn't until the end of January that they took back possession of the house as he appeared to have left.
6. The legal member then enquired why the rent statement shows an extra £22.85 charged on 31st January and Mr King confirmed he wasn't sure but agreed it could be one extra day's rent. However neither applicant when asked wished to insist on this extra day given they had given the tenant notice to leave at the beginning of January and the Respondent had complied by the end of January. The legal member noted the amount then due after deduction of the deposit was £2085.
7. The written documentation shows a tenancy had been created between the parties where the Respondent leased the Property from the Applicant from 31st January 2019 until 31st January 2020
8. The Rent due according to the lease and rent statement was £695 payable monthly.
9. From the rent statement no rent had been paid from September 2019 until the tenancy came to an end on 31st January 2020.
10. The Applicant is seeking an order for the full amount outstanding. They confirmed that the Respondent has not been in touch and they are not aware of his current whereabouts.

Findings in Fact

1. The parties entered into a lease of the Property which commenced on 31st January 2019 and continued until
2. The Rent due in terms of the lease is £695 every month payable in advance
3. The tenancy came to an end on 31st January 2020 after the Respondent was served a Notice to leave at the beginning of January.
4. The Respondent failed to pay the rent from 30th September 2019 until 31st January 2020.
5. The deposit lodged at the start of the tenancy was £695 it has been claimed and repaid to the Applicants and has been deducted from the rent outstanding.

6. The rent outstanding at 31st January 2020 is £2,085 after deduction of the deposit.
7. No further payments have been made towards the rent.

Reasons for Decision

8. The parties entered into a lease where the Respondent has leased the property from the Applicant from 31st January 2019 and has agreed to pay £695 per month in rent.
9. It appears the Respondent left the Property after being served a Notice to Leave at the beginning of January 2020. The Applicants agent took back control of the Property on 31st January 2020 when it appeared the Respondent had left.
10. The Respondent has failed to make any payment of rent since September 2019.
11. The deposit of £695 has been successfully reclaimed and applied to the rent outstanding reducing it to £2,085. The letting agent had applied an additional days rent of £22.85 which appears on the rental statement but neither applicant wishes to pursue this given the tenant had left by 31st January and it would not appear appropriate that a further days rent is charged.
12. The Applicant is entitled to recover rent lawfully due which is 4 month's rent unpaid until the end of the tenancy. .
13. The Respondent has made no appearance at either of the CMD's held to discuss this application and has made no written representations.
14. The Tribunal accepts the written evidence and verbal statements made by the Applicants, who the Tribunal found clear and credible in their evidence that the rent outstanding and due by the Respondent amounts to £2085.
15. There being no application for time to pay the Tribunal makes an order for payment of the sum claimed.

Decision

An Order for payment of the sum of £2,085 is granted.

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.

Jan Todd
Legal Member/Chair

2nd March 2021
Date

