



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/20/2398

Re: Property at 140 Hospital Hill, Dunfermline, KY11 3AU (“the Property”)

Parties:

Simpson Motors Ltd., 50-80 Rumblingwell, Dunfermline, KY12 9AS (“the Applicant”)

Mr Christopher Gunn, 12 Barnhill Road, Dalgety Bay, KY11 9LL (“the Respondent”)

Tribunal Members:

Helen Forbes (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 should be granted in the sum of £4110.86

Background

1. This is an application dated 16th November 2020, made in terms of Rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”). The Applicant is seeking an order for payment in respect of rent arrears pertaining to the Property, which was the subject of a tenancy agreement between the parties. The Applicant lodged a copy of the tenancy agreement that commenced on 20th Jun 2019 at a rent of £695 per month. The tenancy ended on 21st July 2020.
2. By email dated 4th February 2021, the Respondent requested a postponement of the Case Management Discussion set down for 5th February 2021. The Tribunal did not agree to the postponement and the Respondent made the following representation:

I have just started a new job, so impossible for me to get time off, I acknowledge there is a Dept, but the landlord broke my tv, tore my couch, broke my 1 year olds bed refused me entry to get my stuff, also

the drain was blocked there was human dirt floating in the garden this was why rent was stopped I had no running water no toilet no shower because of this which is a breach of health and safety, kept telling couldn't get a plumber as was lock down which is lies, I accept there is a dept but I contest the amount due to my things being demolished by landlord, I am willing to pay this at £150-£100 per month to clear money, I can start that 27th March when I get paid. How will get I know what happens at court hearing? So I will pay between 100-150 per month to pay off

3. By email dated 4th February 2021, the Applicant made the following response:

I would like to confirm that I dispute Mr Gunn's claim, he was evicted from 140 Hospital Hill, Dunfermline by Sheriff Officer's on 21st July 2020 at 11am and left all belongings in the property. He made appointments to collect his belongings and at short notice cancelled these appointments due to various reasons. We were advised by the Sheriff officers that if the items were not collected these could be disposed of - Mr Gunn was also made aware of this by the Sheriff Officers. We advised Mr Gunn that the belongings would be moved outside the property for him to collect due to the numerous cancelled appointments. On 9th August 2020 the items were put outside for collection. Mr Gunn would have had access to the property if he hadn't cancelled the appointments. The claim of no running water is false and we have never received any notification of this. There was no human faeces in the water which can be evidence.

4. A Case Management Discussion ("CMD") took place by telephone conference on 5th February 2021. Ms Diane Simpson was in attendance on behalf of the Applicant. The Respondent was not in attendance. The Tribunal decided to continue the case to a further CMD to allow the Respondent to provide submissions in relation to his defence, and to make an application for a time to pay direction. No response was received from the Respondent.
5. By email dated 17th February 2021, the Applicant's representative lodged a letter from a gas engineer stating:

We were asked to attend the property at 140 Hospital Hill, Dunfermline due to a blocked external drain. Upon our inspection it was identified that there was a blockage to the kitchen pipe however this was located far down the pipe and would not have caused any issues internally. It should be noted that there were no human faeces in the drain/blockage. This blockage had no impact on the running water into the property and would have not affected the tenants running water.

6. Notification of a CMD to take place at 2pm on 2nd March 2021 was issued to parties on 5th February 2021. The CMD note of 5th February 2021, which also provided notification of the next CMD, was issued to parties on 8th February 2021.

Case Management Discussion

7. A CMD took place by telephone conference on 2nd March 2021. Ms Diane Simpson was in attendance on behalf of the Applicant. The Respondent was not in attendance.
8. The Tribunal determined that the Respondent had been given reasonable notice of the time and date of the CMD, together with details on joining the telephone conference. The Tribunal determined that the requirements of Rule 17(2) had been satisfied and that it was appropriate to proceed with the application in the absence of the Respondent upon the representations of the Applicant and the material before the Tribunal.
9. Ms Simpson said no payment had been made towards the arrears. She moved for an order for payment in the sum of £4110.86.

Findings in Fact

10.
 - i. Parties entered into a private residential tenancy agreement in respect of the Property that commenced on 20th Jun 2019 at a rent of £695 per month.
 - ii. Rent lawfully due in terms of the tenancy was not paid by the Respondent.
 - iii. The Applicant is entitled to recover rent lawfully due.

Reasons for Decision

11. The Respondent has failed to make payment of rent lawfully due. The Applicant is entitled to recover rent lawfully due in terms of the tenancy agreement between the parties.

Decision

12. An order for payment is granted in favour of the Applicant in the sum of £4110.86.

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.

Helen Forbes
Legal Member

2nd March 2021
Date