



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

Chamber Ref: FTS/HPC/CV/20/2572

Re: Property at 1 Brae Street, Ground Floor, Dunkeld, PH8 0BA (“the Property”)

Parties:

W & R Sneddon, 4 Knowelea Terrace, Perth, PH2 0HQ (“the Applicant”)

Mr Nicholas Greig, 1 Brae Street, Ground Floor, Dunkeld, PH8 0BA (“the Respondent”)

Tribunal Members:

Lesley-Anne Mulholland (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the applicant is entitled to an order for payment by the respondent in the sum of ONE THOUSAND, ONE HUNDRED POUNDS (£1,100).

Background

1. On 3 December 2020 an application was made for a payment order in terms of Rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (Application for civil proceedings in relation to a Private Residential Tenancy). I am satisfied that Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 provides jurisdiction to deal with this matter.
2. The application for a payment order represented rent arrears in the sum of £1,100. On 17 February 2021 an application was made to amend the sum to £1,600 representing arrears of rent as at January 2021.

Findings in Fact

1. Mr Sneddon is the beneficial owner of the property.
2. On 18 August 2018 Mr Greig entered into a Private Residential Agreement with Mr Sneddon to rent the property at 1 Brae Street, Ground Floor, Dunkeld, PH8 0BA.
3. The sum due in rent is £280 per calendar month.
4. Mr Greig is in breach of the terms of the agreement by failing to pay his rent when due. He last paid rent on the 18 September 2020.
5. At the date of application the rent arrears were in the sum of £1,100.
6. At the date of hearing the rent arrears were in the sum of £1,660.
7. Mr Greig has failed to engage meaningfully with Mr Sneddon since at least June 2020.
8. He has not made any attempt to make payment of the rent arrears or any sum towards the ongoing rent liability since 18 September 2020.

Reasons

1. On 5 December 2020 an application was made for a payment order in terms of Rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. We were satisfied that we had jurisdiction to deal with this matter under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. On 26 February 2021 a hearing was convened by telephone at 10.00am as notified. Mr Sneddon (The Applicant, landlord and rightful owner) was in attendance. There was no appearance by or on behalf of the tenant, Mr Greig.
3. We considered the application dated 5 December 2020, alongwith all accompanying papers, including the tenancy agreement and schedule of rent payments and arrears, alongwith the Certificate of Service and enclosures served by Sheriff Officers on 26 January 2021. We were satisfied that Mr Greig had been properly notified of the application.

4. The Notice of Hearing was served on Mr Greig in time together with a full set of papers. He failed to respond. Accordingly we were satisfied that he had waived his right to attend or be represented. We decided to proceed in his absence. We had regard to the overriding objective. It was fair and just to proceed. We had sufficient information before us to decide the application at the case management stage.
5. The Case Management Discussion (CMD) took place remotely by teleconference on 26 February 2021. There were no apparent difficulties with sound or connectivity issues. We were grateful for the patience and understanding shown by those present which allowed the Case Management Discussion to proceed remotely during the current pandemic. We were satisfied those taking part in the discussion had a reasonable opportunity to put their points across and that the Case Management Discussion was fair. No complaint about the lack of effective participation caused by the remote hearing was brought to our attention.
6. At the CMD Mr Sneddon advised that Mr Greig last made payment of rent on the 18th of September 2020. Since then contact between them has been sporadic. He has tried to communicate with Mr Greg in various ways. On several occasions he emailed him to ask if he had any proposals to put forward to meet his rental obligations. He would later be contacted by Mr Greig by telephone who would claim that his Internet was not working. Mr Sneddon would then contact Mr Greig by text message, which he would then ignore saying that his phone was no longer working and asking to be contacted by email. He sent a copy of the outstanding rent account in the sum of £1,600 last week to him by email. In December 2020 he put a card through his door as he required to carry out emergency repairs but got no reply. Mr Greig last made contact with him in September or October 2020 to the best of his knowledge and belief.
7. Mr Sneddon thought that he might be struggling financially and therefore sent advice to him which can be found on the 'Shelter' and Government websites advising him about the possibility of claiming social security benefits and housing benefit and encouraging him to get in touch. He never received any response from him and therefore is unaware whether he is working, claiming benefits or something else. He has no knowledge of his financial or employment status. As far as he knows Mr Greig lives alone as the tenancy agreement specifies this. He is not aware of him having any health issues.
8. The notice to leave sent to Mr Greig specifies that a payment order is being sought because he has accrued rent arrears in the sum of £1,100.

9. Mr Greig has been properly notified in time of the application and sum of £1,100 sued for. He has therefore been given an opportunity to make representations and attend the hearing. He has failed to engage with The Tribunal and meaningfully engage with Mr Sneddon. Accordingly there is no information before us to contradict Mr Sneddon's stated position in respect of the rent arrears. The documentary evidence presented by Mr Sneddon includes a schedule of outstanding rent payments and the tenancy agreement and we accept them for their terms.
10. When Mr Sneddon gave Mr Grieg the Notice To Leave and when he was notified by HMCTS of the application for a payment order, the amount of rent arrears stood at £1,100. We were satisfied that Mr Grieg was informed of the amount of the payment order sought at least 14 days before the hearing.
11. Mr Sneddon submitted an updated schedule of rent arrears on 17 February 2021 showing outstanding arrears of £1,660.00. We treated this as an application to amend. This was sent to Mr Grieg less than 14 days before the hearing. Accordingly, we decided not to allow the amendment and proceeded on the basis of the outstanding amount properly notified in time to Mr Grieg in the sum of £1,100.
12. We considered the terms of the Coronavirus (Scotland) Act 2020. We were satisfied, using our discretion, that the granting of a payment order was reasonable in all the circumstances.
13. It is clear that Mr Greig has made no attempt to meet his rent liability for some time and has delayed excessively in trying to resolve this matter in any satisfactory way. As at the date of the CMD, Mr Greig had not put forward any proposal to meet the sums due.
14. Having considered all the papers before us, along with the submissions by the Applicant, we decided that it was reasonable to grant the payment order in the sum of £1,100, representing rent arrears accrued for the period from September 2019 to April 2020.
15. We were satisfied that we could decide the application at the Case Management Discussion as Rule 17(4) permits. It was not necessary to fix a hearing as Mr Greig has not opposed the application or contradicted it in any way.

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.

Decision

The Respondent has to pay The Applicant the sum of £1,100.

L-A Mulholland

– 26 February 2021

Legal Member