



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/21/2220

Re: Property at 30 Kyleakin Road, Glasgow, G46 8AF (“the Property”)

Parties:

Mr Myzafer Kabashi, 2 Copland Place, Glasgow, G51 2RS (“the Applicant”)

Miss Nancy Mccaig, 30 Kyleakin Road, Glasgow, G46 8AF (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order in the sum of Eight Thousand One Hundred pounds only (£8100.00) with interest at the rate of 3 per cent per annum be granted in favour of the Applicant and against the Respondent.

Background

1. This Application for a payment order in terms of Rule 111 of the Tribunal Rules of procedure was lodged with the Tribunal on 14th September 2021 and accepted by the Tribunal on 30th September 2021. A case management discussion was fixed for 12th November 2021 at 2pm. At the case management discussion the tribunal member noted that the application was not signed or dated and continued the case management discussion in order for a dated and signed application to be submitted on behalf of the Applicant and this to be served by the Tribunal on the Respondent. It was further noted that the Respondent had received notification of the case management discussion but had not attended or submitted representations.

2. The case management discussion was continued until 15 December 2021 at 10 am. The Applicant’s solicitor had submitted a news signed and dated application form, a paper apart and a request to increase the sum being requested by way of a payment

order by email to the Tribunal dated 24 November 2021. The Respondent had been copied into this email from the Applicant's solicitor on the email address set out in the tenancy agreement.

3. The Respondent did not attend the case management discussion on 15 December 2021 at 10 am nor had she submitted any representations for that date. The Tribunal administration had posted the signed and dated application to her by ordinary post and this had not been returned. The notification for the case management discussion had been sent by recorded delivery post and it was not clear if this had been successfully delivered as the post office information had not been updated. This letter had not been returned to the Tribunal and the Applicant's solicitor's email to the tribunal into which the Respondent was copied, gave the date of the case management discussion as 15 December 2021.

Discussion

4. At the case management discussion on 15th December the Applicant attended and was represented by Ms Gaughan solicitor who had represented him at the previous case management discussion. Ms Gaughan requested that the tribunal proceed in the absence of the Respondent who she said had completely failed to engage with the tribunal application and proceedings. The Tribunal was satisfied that the Respondent had received fair notice of the continued case management discussion given that she had been copied into the email to the Tribunal sent by the Applicant's solicitor which gave the date of the continued case management discussion and contained the signed application, the grounds for the application and the updated table of rent arrears. The Tribunal was satisfied that even if the Respondent had not received the tribunal's recorded delivery letter with the date that the Respondent would have known of the calling on 15 December and could have engaged with the proceedings if she had wished to do that.

5. The Applicant's solicitor sought a payment order in the sum of £8100 which was a figure higher than the amount stated in the original application. The amended sum had been intimated to the Respondent by email of 24 November 2021 and the Tribunal was therefore satisfied that the Respondent had received notice of the intention to amend the sum in line with Rule 14A of the tribunal rules of procedure.

6. The Tribunal had sight of the tenancy agreement, the signed and dated application, a paper apart, a rental table and updated rental table submitted by the Applicant's solicitor.

7. The applicant's solicitor Ms Gaughan explained that parties had entered into a private residential tenancy agreement with effect from 19 February 2021 and the agreement continues. In terms of the agreement the Respondent had agreed to make a payment of rent of £1350 on the 19th of every month. No rent had been received since the rent which was due and paid on 19th May 2021. The current rent arrears stood at £8100. The Applicant's solicitor indicated to the Tribunal that the Applicant had attempted to have multiple conversations with the Respondent regarding the rent arrears but she had failed to engage with him in relation to these conversations. His last attempt to contact her regarding the unpaid rent had been met with the Respondent calling the police. He had even contacted the local benefits office to see if housing benefit might be available in relation to the tenancy. He could not obtain any information from the benefits office. His understanding had been that when

the tenancy started the Respondent had not been in receipt of benefit but he was not aware of whether there had been a change in circumstances because the Respondent would not engage with him.

8. The Applicant's solicitor was seeking interest at the rate of rate of 8% per annum in relation to the outstanding rent arrears. The Tribunal member explained that the Tribunal did not have power to award such a rate. The Applicant 's solicitor confirmed that the tenancy agreement did not have a provision for interest to be added to late rental payments. The Applicant's solicitor indicated that she was content for the tribunal to consider an appropriate rate of interest given that the Respondent had been given notice of the intention to seek interest in the application.

9. The Tribunal was satisfied that it had sufficient information upon which a decision could be made and that the proceedings had been fair.

10. The Tribunal made a payment order in the sum of £8100 with interest at the rate of 3% per annum to run from the date of the decision until payment.

Findings in Fact

11. The Applicant and the Respondent entered into a tenancy agreement at the property with effect from 19th February 2021 and this agreement continues.

12. The monthly rent payable under the agreement on the 19th of each month was £1350.

13. No rent has been paid by the Respondent to the Applicant since the rental payment which was due and paid on 19 May 2021.

14. No rent for the property has been paid for a period of six months and the arrears currently stand at £8100.

15. The Applicant has made a number of attempts to engage with the Respondent in relation to the rent arrears but these have been unsuccessful.

16. The Applicant attempted to contact a local benefits office to see if housing benefit could be considered in relation to the tenancy but could not obtain any information.

17. At the start of the tenancy the Respondent was understood to be paying the rent privately and without recourse to benefits.

18. The sum of £8100 is lawfully due by the Respondent to the Applicant in respect of rent arrears due in terms of the tenancy agreement.

Reasons for Decision

19. The Tribunal took the view that it was reasonable to grant the payment order in the circumstances outlined on behalf of the Applicant. He had clearly made efforts to try to find out why the rent was not being paid but these had been unsuccessful with the Respondent failing to engage with him over a period of some months. The application had requested a payment order for rent arrears together with interest on the sums due. Since the Respondent had been advised that the Applicant was seeking interest on the rent arrears it appeared appropriate to award interest in terms of Rule 41A of the tribunal rules of procedure and this was awarded at the rate of 3% per annum from the date the order was granted until payment. The interest rate awarded reflects an interest rate which is referable to current borrowing rates and would reflect the loss sustained by the Applicant.

Decision

The Tribunal granted a payment order against the Respondent and in favour of the Applicant in the sum of £8100 only with interest at the rate of 3% per annum from the date of the Tribunal decision until payment.

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.

Valerie Bremner

15.12.21

Legal Member/Chair

Date