



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/22/2466

Re: Property at 16/1 Avonmill Road, Linlithgow, West Lothian, EH49 7QX (“the Property”)

Parties:

Mr Vincent McColgan, 106 Avalon Gardens, Linlithgow, West Lothian, EH49 7PL (“the Applicant”)

Mr Kevin Morrison, Mrs Natalia Morrison, 1 Flat 20, Heron Place, Edinburgh, EH5 1GG; 1 Flat 20, Heron Place, Edinburgh, EH5 1GG (“the Respondents”)

Tribunal Members:

Richard Mill (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order be granted against the Respondents for payment to the Applicant of the sum of One Thousand and Four Pounds and Thirty Two Pence (£1,004.31).

Introduction

This application seeks a payment order relating to alleged arrears of rent and is under rule 111 and section 71 of the Private Housing (Tenancies) (Scotland) Act 2016.

A Case Management Discussion (‘CMD’) took place on 6 December 2022. The sole defence raised on behalf of the respondents is whether or not Covid-19 rules and restrictions, issued by the Scottish Government, and which were in force at the commencement of the tenancy, prohibited them taking up occupation of the property and, as a consequence, entitled them to withhold rent for a period of time at the commencement of the tenancy.

Documentation submitted into evidence

Both parties have lodged substantial additional bundles of evidence as this case has progressed before the tribunal. It is not necessary to set out the dates which all of these have been received, nor the specific contents, but the parties can be assured that all of their emails with additional representations and documents have been fully considered along with the initiating bundle of documents which formed the application and which was served upon the respondents.

The hearing

The evidential hearing in this matter took place by teleconference on 2 May 2023 at 10.00 am. The applicant represented his own interests. The first respondent represented the interests of both respondents. The second respondent did not participate in the hearing.

The tribunal conducted the hearing applying the overriding objective contained within paragraph 2 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017.

The tribunal initially exercised its inquisitorial function asking questions of both parties in order to identify the material facts upon which the tribunal's decision would be made. Each of the parties were thereafter afforded the fair opportunity of giving additional evidence and making further submissions and representations. The respondent was additionally afforded an adjournment to allow him a further period of time for reflection before making his final submissions.

Given the volume of evidence, the tribunal reserved its decision in order to carefully scrutinise and analyse both the documentary and oral evidence before reaching a decision.

Findings and Reasons

1. The property is 16/1 Avonmill Road, Linlithgow, West Lothian EH49 7QX.
2. The applicant is Mr Vincent McColgan who is the heritable proprietor of the property and registered landlord. The respondents are Mr Kevin Morrison and Mrs Natalia Morrison who are the former tenants.
3. The parties entered into a private residential tenancy which commenced on 15 January 2021. The monthly rent stipulated in the written tenancy agreement was £775 per month.
4. The lease agreement was signed electronically, firstly by the applicant on 13 January 2021 and thereafter by each of the respondents on 15 January 2021 by separate emails. The respondents willingly entered into the contract, knowing its terms.

5. The parties all met at the property on 16 January 2021 when the respondents were given the keys to the property and the vacant possession of it. The respondents returned to the property on at least one further occasion shortly thereafter when they directly assisted in the delivery of a second-hand set of table and chairs.
6. In accordance with the terms of clause 7 of the written tenancy agreement, the respondents willingly paid the sum of £4,650 at the commencement of the tenancy for the six month period 15 January 2021 to 14 July 2021.
7. The respondents at the time that the tenancy was entered into lived in Edinburgh. Their desire to secure the property was to facilitate their daughter being enrolled at Linlithgow Academy. The securing of the lease between the parties assisted in that regard and the respondents' daughter was enrolled in Linlithgow Academy from January 2021.
8. Throughout the Covid-19 pandemic, the Scottish Government issued numerous rules at various times. At the time that the tenancy was entered into there was no strict ban on house moves and there was nothing which prevented the parties entering into the tenancy agreement and moving into the property. From the respondents' prospective the securing of the tenancy was essential in that it was the gateway to ensure that their daughter was enrolled in Linlithgow Academy. Despite the existence of the Scottish Government Covid-19 guidelines in force the respondents entered into the tenancy agreement, visited the property on 16 January 2021 to collect the keys, returned to the property on at least one other occasion and paid the required rent for occupation from 15 January 2021.
9. The respondents did not raise any concerns regarding the payment of rent with the applicant at the time that the tenancy was entered into or at the time that they took up occupation of the property. It was not until over one year later that the respondents first raised such concerns with the applicant.
10. Following the initial payment of 6 months rent, the respondents continued to pay full rent from and including July 2021 to February 2022. It was only then that the respondents started to fall behind in respect of their legal obligations to pay the contractual rent. In February 2022 one-half of the rental payment due was paid in the sum of £387.50. From around this time the respondents had separated and the second respondent was claiming the housing element of universal credit. In the month of February 2022 one-half of the full rent was claimed by the second respondent, being the maximum which she could claim given the existence of the joint tenancy at that time. The respondents thereafter made full payments of rent in the months of March, April and May 2022. In June 2022 the respondents paid another one-half monthly rent payment in the sum of £387.50. They did not make any further payments of rent.
11. The respondents failure to pay any further rent payments was in direct response to them receiving a notice to leave from the applicant seeking to bring the tenancy agreement to a conclusion and seeking to have the respondents

remove themselves from the property. That is not a basis upon which the respondents had right or entitlement to withhold rent.

12. The respondents left the property on 23 September 2022. After apportioning the final month of rent in September 2022 the amount of rent outstanding at the time of their departure was £2,554.31.
13. The deposit previously paid by the respondents to the landlord which was protected by MyDepositsScotland, in the sum of £1,550 was recovered by the applicant and this reduced the level of arrears outstanding to £1,004.31.
14. The applicant in all of the circumstances seeks to recover the sum of £1,004.31 being the amount of the rent arrears continuing to be due.
15. While the respondent relies upon the existence of Covid-19 guidelines to justify the non-payment of rent for a 3 month period between January and April 2021, there is no legal basis for this. The respondents voluntarily entered into the tenancy agreement knowing full well that rent was due from 15 January 2021 onwards at a rate of £775 per month. They did not complain about this until their personal circumstances and, no doubt, financial circumstances changed in or about February 2022.
16. In addition to there being no valid legal defence submitted on behalf of the respondents the tribunal also found the position stated on their behalf by the first respondent to lack credibility and to be disingenuous. The respondents willingly entered into the tenancy contract knowing its terms. They were eager to enter into the contract to secure a school placement for their daughter despite having other accommodation available to them in Edinburgh. The tribunal found that the respondents complaint, first raised a year after the tenancy commencing about whether any rent should be due for the initial 3 month period is directly as a consequence of their poor financial circumstances then. The tribunal further notes that the second respondent received state benefits to cover a substantial portion of the rent in the months of June, July, August and September 2022, but did not make this over to the applicant.
17. The respondent did not dispute in his oral evidence that he and the second respondent signed the terms of the written lease agreement. He did not dispute the written statement of rents due and rent received which is relied upon by the applicant. The tribunal found to be a credible and reliable source of documentary evidence. The applicant seeks to recover the rent outstanding for periods which do not relate to the disputed period. The respondents willingly paid the rent for the period they now dispute liability for. The respondents were under a legal obligation to pay rent for the entire period of their occupation, namely 15 January 2021 to 23 September 2022.
18. The applicant is entitled to recover arrears of rent validly due under and in terms of the written lease agreement. He is therefore entitled to recover the outstanding sum £1,004.31. The respondents refuse or unreasonable delay making payment to the applicant of these sums which they are obligated to pay.

In the circumstances a payment order is necessary and is made by the tribunal for the outstanding rent arrears.

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.

R Mill

2 May 2023

Legal Member/Chair

Date