



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/22/3500

Re: Property at 22 Bridge Street, Penicuik, Midlothian, EH26 8LN (“the Property”)

Parties:

Mrs Catherine Swan, John Michael Swan, Borneostraat 28B, Amsterdam, 1094CK, The Netherlands; Borneostraat, Amsterdam, 1094CK, The Netherlands (“the Applicants”)

Natalie Moffat, 22 Bridge Street, Penicuik, Midlothian, EH26 8LN (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Order for Payment against the Respondent in favour of the Applicants in the sum of £5,744.21.

Background

1. The Applicants submitted an application under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The Applicants sought an order for payment in respect of rent arrears said to have been incurred by the Respondent.
2. By decision dated 28 November 2022, a Convenor of the Housing and Property Chamber having delegated power for the purpose, referred the application under Rule 9 of the Rules to a case management discussion (“CMD”).
3. The Tribunal intimated the application to the parties by letter of 11 January 2023 and advised them of the date, time and conference call details of today’s case

management discussion. In that letter, the parties were also told that they required to take part in the discussion and were informed that the Tribunal could make a decision today on the application if the Tribunal has sufficient information and considers the procedure to have been fair. The Respondent was invited to make written representations by 1 February 2023. No written representations were received.

4. The Tribunal received an email from the Applicants' representative on 27 January 2023 attaching an updated rent statement, along with an application to amend the sum sought to £5,744.21. That email was intimated to the Respondent.

The case management discussion

5. The Applicants were represented by Mr David Gray. The CMD took place by conference call and proceeded in the absence of the Respondent. This case called alongside a related case which proceeds under chamber reference FTS/HPC/EV/22/4046. The Applicants' representative explained the arrears of rent have increased since the application was submitted and now total £4,397.81. There is a shortfall between the rental charge and the housing element of the Respondent's benefits payment. The Respondent has not made any arrangement to pay the shortfall of rent or the rent arrears. The Applicants have incurred legal expenses in pursuing the Respondent for payment of the rent and for recovery of possession of the property. The legal expenses amount to £1,346.40. Clause 8 of the tenancy agreement provides "The Tenant shall be held liable for any further reasonable costs incurred by the Landlord though the Tenant's failure to pay rent on time including, but not limited to, any administrative charges or late fees made by the Landlord's bank, any expenses incurred by the Landlord in pursuing the Tenant for payment of said unpaid rent, legal or otherwise." The Applicants' representative sought an order for payment in the sum £5,744.21.

Findings in Fact

6. The parties entered into a 2 private residential tenancy agreements. The first tenancy agreement commenced 29 October 2021 and the second commenced 15 June 2022.
7. The Respondent was obliged to pay rent at the rate of £1,100 per month, in advance.
8. As at 25 January 2023, the Respondent was in arrears of rent of £4,397.81
9. The Applicants incurred legal expenses of £1,346.21 in pursuing the Respondent for recovery of possession and a payment order in respect of rent arrears.

Reason for Decision

10. The Tribunal proceeded on the basis of the documents lodged and the submissions made at the CMD. The Respondent failed to participate in the discussion and did not lodge any written submissions. The updated rent statement lodged demonstrated that there are increasing arrears of rent. There was nothing to indicate that the Respondent disputed the level of rent arrears shown on the updated rent statement. The Tribunal was satisfied that the sum of £4,397.81 is due to the Applicants in respect of rent arrears. The amendment application had been intimated to the Respondent. The Applicants incurred legal expenses in pursuing the Respondent in respect of her failure to pay rent. The tenancy agreement provided for the Applicants recovery of expenses incurred by them. The Tribunal therefore granted the application to amend the sum sued for and granted an order for payment in the sum £5,744.21.

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.

Nicola Irvine

Legal Member/Chair

27 February 2023
Date