



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 70(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/20/1362

Re: Property at 7 Hill Court, South Queensferry, EH30 9LR (“the Property”)

Parties:

Mrs Mina Hoskins, 38 Springfield View, South Queensferry, EH30 9RZ (“the Applicant”)

Mr Andrew Malarky, Mrs Laura Malarky, 7 Hill Court, South Queensferry, EH30 9LR (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment by the Respondents to the Applicant in the sum of Eleven thousand seven hundred pounds (£11,700)

Background

- 1 By application dated 17 March 2020 the Applicant sought an order for payment of rent arrears against the Respondent in the sum of £7,150. In support of the application the Applicant provided a copy Tenancy Agreement, Bank Statements and Form AT6 – Notice of Intention to Raise Proceedings for Possession.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 18th September 2020.

- 3 Due to the imposition of restrictions in response to the Covid-19 pandemic the Case Management Discussion was scheduled to take place by tele-conference. A copy of the application paperwork together with the date and time of the Case Management Discussion and instructions on how to join the tele-conference was served upon the Respondents personally.
- 4 By Notice of Direction dated 10 August 2020 the Tribunal directed the Applicant to provide a Rent Statement and Written authorisation from Stuart Hoskins for the Applicant to pursue the matter. Mr Stephen Aitchison responded by email to the Tribunal confirming that Mr Hoskins had passed away and provided a rent statement confirming arrears had increased to £10,400 as at 1 July 2020. Mr Aitchison also provided an email from Mrs Malarky dated 14 June 2019 which he stated was proof of the Respondents acceptance of the debt owed.
- 5 By emails dated 10 September 2020 Mr Andrew Malarky set out the Respondents' position regarding the application. In summary, he outlined a history of poor tenancy management by the Applicant including her failure to register as a landlord, issues with tenancy documentation that had hindered the Respondents' attempts to obtain housing benefit and intimidation by Mr Aitchison. He also explained that he and his wife were struggling financially and expecting their second child. Mr Malarky attempt to provide supporting documents by way of a drop box, then a zip file but was advised by the Tribunal administration that these could not be accepted.

The Case Management Discussion

- 6 The Case Management Discussion took place on 18 September 2020 by teleconference. The Applicant, Mrs Hoskins, was in attendance and represented by Stephen Aitchison. Mr Andrew Malarky was present and appearing on behalf of himself and Mrs Laura Malarky.
- 7 As a preliminary issue the Tribunal noted the Applicant had produced a rent statement and that arrears had increased to £11,700 as at 1 September 2020. The Tribunal therefore agreed to amend the application to reflect the updated figure.
- 8 The Tribunal then heard verbal submissions from the parties which can be summarised as follows:-
 - (i) Mr Stephen Aitchison, on behalf of the Applicant, confirmed that she sought an order for payment in the sum of £11,700. The property was previously managed by Mr Stuart Hoskins, her husband, who had passed away in April 2019. Since then no rent had been paid by the Respondents. They had apologised and advised that they would catch up with payments but nothing had been received. The Applicant was faced with mounting debt, unable to pay the mortgage for the property

and having to use savings. She had been badly affected by the situation in terms of her mental health.

- (ii) Mr Malarky addressed the Tribunal on behalf of the Respondents. He confirmed that the last payment of rent was in April 2019. He narrated the circumstances since Mr Hoskins had passed away, including issues both himself and Mrs Malarky had faced with their employment. They had attempted to claim housing benefit but had been unable to do so due to defects with the tenancy agreement. Everything had been going well with the tenancy until June 2019. They had been advised that the Applicant was looking to sell the property, however if they caught up with rent they might be able to stay. They had then been served with repossession notices which they had disputed as invalid. Mr Aitchison had made the situation more difficult through his conduct and they had attempted to involve a mediator to assist with the discussions and try to resolve matters, to no avail. The Respondents felt that the Applicant had caused the issues with the rent arrears by not sorting things out at an earlier stage. This could have all been avoided and the Respondents have been caused unnecessary expense. In response to questions from the Tribunal, Mr Malarky explained that the Respondents accepted that there were rent arrears, but considered that they were only due to pay four months rent, on the basis that the Applicant was not registered as a landlord until recently, there were issues with repairs at the property which had not been addressed and the Applicant could have reached out to them earlier to sort out the situation. The Tribunal confirmed that the Respondents were not formally withholding rent in relation to any repairs and Mr Malarky conceded that they simply couldn't afford to pay as they didn't have the income at present. Mr Malarky confirmed that he had sought advice from agencies on his position regarding the matter.

Findings in Fact and Law

- 9 The parties entered into a Tenancy Agreement in respect of the property which commenced on 1 August 2017.
- 10 In terms of Clause 1 of the said Tenancy Agreement the Respondents have a contractual obligation to pay rent in the sum of £650 on the first day of each month.
- 11 The last payment made by the Respondents to the Applicant in respect of rent was the sum of £650 in April 2019.
- 12 As at 1st September 2020 arrears in the sum of £11,700 are outstanding.

- 13 The Applicant's delay in registering as a landlord with the local authority does not affect the Respondents' contractual obligation to make payment of the monthly rent.
- 14 The Respondents are not withholding rent as a result of disrepair at the property.
- 15 The arrears in the sum of £11,700 are therefore lawfully due under the terms of the Tenancy Agreement between the parties.

Reasons for Decision

- 16 Having considered the written representations from the parties and the verbal submissions at the Case Management Discussion the Tribunal determined it could make a determination of the application at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties. The Tribunal noted that the Respondents had attempted to submit documents in advance of the Case Management Discussion which had not been crossed over to the Tribunal but did not consider it required sight of these as it was satisfied that what had been presented by way of their written representations and verbal submissions at the Case Management Discussion was sufficient. It was clear that the substantive matters were agreed between the parties and there was therefore no requirement for a hearing to be fixed.
- 17 Having considered the terms of the tenancy agreement and rent statement produced by the Applicant, and based on its findings in fact, the Tribunal was satisfied that the Respondents were liable to pay the sum of £11,700. Whilst the Tribunal accepted that there may have been issues with the management of the tenancy, as outlined by Mr Malarky in his written and verbal representations, these did not ultimately impact on the Respondents' obligation to pay rent for a property they continued to reside in. In respect of issues such as landlord registration and outstanding repairs, there were alternative statutory remedies available to the Respondents if they wished to pursue such matters. However it was clear from Mr Malarky's concession at the Case Management Discussion that this was simply a case of affordability, in that they had suffered financially over the past year. Whilst the Tribunal had sympathy for the position the Respondents had found themselves in, it could not ignore the Applicant's right to receive rent under the terms of the Tenancy Agreement.
- 18 The Tribunal therefore made an order in the sum of £11,700 against the Respondents. Parties wished it recorded that the Respondents will seek advice and put a formal proposal for payment to Mr Aitchison as the Applicant's Representative in early course, and will arrange payment of the next rent due by mid October.

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.

Ruth O'Hare

18 September 2020

Legal Member/Chair

Date