



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/22/3331

Re: Property at 28G Kinnoull Street, Perth, PH1 5EX (“the Property”)

Parties:

Mrs Rhona McLaren, Mr Andrew McLaren, Wester Keillour Farm, Methven, Perth, PH1 3RA; Wester Keillour Farm, Methven, Perth, PH1 3RA (“the Applicants”)

Mr Ciro Sito, Ms Aleksandra Polok, 7 Viewfield Place, Perth, PH1 5AG; 7 Viewfield Place, Perth, PH1 5AG (“the Respondents”)

Tribunal Members:

Nicola Irvine (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Order for Payment against the Respondents in favour of the Applicants in the sum of £7,870 and refused the Respondents’ application for a time to pay direction.

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 the sum of £9,725 in respect of rent arrears said to have accrued and the cost of redecoration of the property.
2. By decision dated 14 December 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 Notice of Acceptance was intimated to the Applicants on 16 December 2022. The Tribunal intimated the application to the parties by letter of 19 January 2023 and advised them of the date, time and conference call details of today's CMD. 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 Respondents were invited to make written representations by 9 February 2023.
4. By email of 23 February 2023, the Respondents applied for a time to pay direction, offering £70 per month.
5. By email of 26 February 2023, the Applicants submitted their opposition to the application for a time to pay direction.

The case management discussion

6. The CMD took place by conference call. Both Applicants joined the conference call. The First Respondent joined the conference call and represented himself and the Second Respondent.
7. The Applicants sought payment of rent arrears, the cost of redecoration and the cost of replacement locks. A copy of the invoice for replacement locks was produced. It was a matter of agreement that the Respondents vacated the property on 6 September 2022 and returned the only 2 keys they had to the property; the Applicants recovered possession on that date. The Respondents accepted that rent arrears as at 6 September 2022 amounted to £7,870.
8. The Respondents disputed liability for rent after 6 September 2022. They also disputed liability for the cost of replacement locks on the basis that they only had 2 keys and returned both of them. The Respondents disputed the redecoration costs. Their position was that the First Respondent offered to redecorate the property on 6 September 2022 and that offer was rejected. Ultimately, the parties agreed the cost of redecoration at £475. The Applicants' position was that they were fearful that the Respondents had made a copy of the key and may return to the property. It took the Applicants some time to redecorate and then advertise the property for rental and for that reason, the Applicants sought payment of rent from the Respondents until 31 October 2022.
9. The Respondents accepted that sums are due to the Applicants and sought a deduction of £475 from the sum which is found due by the Tribunal, because the deposit of £475 paid by the Respondents has not been returned. The Applicants accepted that the sum of £475 fell to be deducted from any sums found due by the Tribunal.
10. The Tribunal found that there is no basis to find rent due by the Respondents beyond 6 September 2022 when the Applicants recovered possession of the property. There was no legal basis to find the Respondents liable for the cost

of replacement locks. There was no provision for such a liability in the tenancy agreement and the Respondents had returned both keys when they vacated the property. The Tribunal indicated that the sum due by the Respondents to the Applicants amounted to £7,870. That sum represents rent arrears of £7,870 to 6 September 2022 and redecoration costs of £475 but under deduction of the Respondents' deposit of £475.

11. The Tribunal proceeded to consider the Respondents' application for a time to pay direction. The Respondents initially offered payment at the rate of £70 per month. At the CMD, the Respondents increased the offer to £100 per month and then £200 per month. The Applicants were not prepared to accept instalment payments at the level offered. The Respondents could not commit to increasing the offer.

Findings in Fact

12. The parties entered into a private residential tenancy which commenced 12 April 2019.
13. The Respondents were obliged to pay rent at the rate of £475 per month, in advance.
14. At termination of the tenancy, the rent arrears due by the Respondents amounted to £7,870.

Reason for Decision

15. The Tribunal proceeded on the basis of the documents lodged and the submissions made at the CMD. The parties were agreed on the level of rent arrears, the value of the redecoration work and the return of the Respondents' deposit. There was no legal basis to find the Respondents liable to pay rent after termination of the tenancy, nor to pay for the cost of replacement locks.
16. Given the length of time it would take to repay the debt even at £200 per month, (40 months) the Tribunal refused the application for a time to pay direction. There was no agreement between the parties to repay the debt by instalments. Rent arrears were substantial and had accrued over a long period of time. It was not reasonable to expect the Applicants to wait for 40 months before all sums due have been repaid.

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

Date 2 March 2023