



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/20/1625

Re: Property at 81 George Govan Road, Cupar, Fife, KY15 4GY (“the Property”)

Parties:

Jan Isobel Ross and Steven Ross, 21 Beechgrove Rise, Cupar, KY15 5DT (“the Applicants”)

Mr Stephen Bradley, 81 George Govan Road, Cupar, Fife, KY15 4GY (“the Respondent”)

Tribunal Members:

Andrew Cowan (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the sum sought by the Applicant as rent arrears of £6300 was lawfully due from the Respondent, and granted an order for payment of that sum, by the Respondent, to the Applicant.

Background

1. By an application dated 30th July 2020 (“the application”), the Applicants sought an order for payment of £4600 being rent arrears.
2. A copy of the application, along with a letter from the Tribunal giving details of the proposed Case Management Discussion, were served upon the Respondent by Sheriff Officers on 11th September 2020.
3. By email dated 17th September 2020 the Applicants sought to amend the sum claimed in their application by (a) increasing the sum sought by way of rent arrears to the figure of £6300 and (b) by seeking to add a new head of claim in the sum of £504.43 in respect of legal costs incurred by the Applicants in relation to serving a

Notice to Leave upon the Respondent on grounds of non-payment of rent. A copy of the Applicants requests to amend the claim in these respects was served by recorded delivery (by the Applicants) upon the Respondent under cover of a letter dated 17th September 2020.

The CMD

4. The CMD took place by telephone conference on 7th October 2020. The Applicants did not join the CMD call. They were represented at the CMD by Mr Fraser Crombie. Mr Fraser confirmed that he was a Solicitor and had been asked to represent the Applicants at the CMD, although he had not prepared the application.
5. The Respondent did not join the CMD call. The Respondent had not made any written representation to the Tribunal in advance of the CMD. The Respondent had been intimated with the date and time of the CMD by Sheriff Officers. The Tribunal was satisfied that the requirements of rule 24(1) of the Tribunal Regulations (regarding the giving of notice of a hearing) had been duly complied with, and proceeded with the application in accordance with Rule 29 of those Regulations.
6. At the CMD the Tribunal was able to consider:
 - a. The terms of the tenancy agreement between the parties dated 1st August 2018
 - b. Statement of rent and arrears lodged by the Applicant showing total rent arrears due by the Respondent as at 10th September 2020 in the sum of £6300
 - c. Copy fee invoice addressed to the Applicants from Gilson Gray solicitors dated 31 August 2020 in relation to, inter alia, the service of a notice to leave upon the Respondent, and
 - d. Copy notice to leave dated 30th July 2020
7. At the CMD the Applicants' solicitor explained that the Respondent continued to remain in occupation of the Property.

Applicant's Request to Amend the Application

8. At the start of the CMD the Tribunal considered the Applicants' requests to amend the application.
9. In relation to the Applicants' request to increase the sum sought by way of rent arrears to the figure of £6300 the Tribunal considered the application under Rule 14A of the Tribunal Regulations (Request to amend the application in respect of matters other than new issues). The Tribunal noted that the Respondent had notice of the proposed amendment at least 14 days prior to the CMD. No objection to the amendment had been intimated by the Respondent. In the circumstances the Tribunal granted the Applicants' request to increase the sum claimed (in relation to rent arrears) to £6300.

10. The Applicants had also requested that the Tribunal allow amendment of the application by allowing the addition of a new head of claim in the sum of £504.43 - in respect of legal costs incurred by the Applicants in relation to serving a Notice to Leave upon the Respondent. The Tribunal considered that this application would require to be considered under Rule 14 of the Tribunal Rules (Amendment raising new issues). The Tribunal could not be satisfied that the sums claimed related to a contractual liability upon the Respondent. It appeared to the Tribunal that this amendment was seeking to recover expenses incurred by the Applicants in relation to eviction proceedings. Having considered the matter the Applicants' Solicitor sought to withdraw this part of the amendment request. The Tribunal allowed that part of the amendment request to be withdrawn.

Further Information

11. The Applicant's solicitor confirmed that no further payment had been made by the Respondent toward the rent arrears and that the sum of £6300 remained due for payment by the Respondent as at the date of the CMD.
12. Under rule 17(4) of the schedule to the First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (the Procedure Rules) the First-Tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision. The Applicants asked the Tribunal to grant an order for payment against the Respondent in favour of the Applicants for the amended sum of £6300.

Findings in fact, and in fact and law; reasons for decision

13. The Applicant let the Property to the Respondent in terms of a written tenancy agreement dated 1st August 2018. That agreement states, in clause 8, that the rent payable in terms of the tenancy agreement is £1,150 per calendar month.
14. The Respondent has accrued rent arrears under the terms of his tenancy agreement in relation to the property in the sum of £6300.00 as at the date of the CMD.

Decision

15. The Tribunal accordingly granted an order for payment by the Respondent to the Applicants to the Respondent in the sum of £6300

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.

Andrew Cowan

Andrew Cowan _____ **7th October 2020** _____
Legal Member/Chair **Date**