



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/CV/23/1947

Re: Property at 140 Strathmore Street, Dundee, DD5 2PB (“the Property”)

Parties:

Mrs Clare Hendry, Mr Robert Hendry, 48 Hawthorn Grove, Dundee, DD5 3NA (“the Applicant”)

Mr Jamie O'Rourke (SBA), Miss Lauren Hulme, UNKNOWN, UNKNOWN; Flat G/L, 10 Nicholas Place, Dundee, DD3 9NG (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment by the Respondent in the sum of £4,900 should be made in favour of the Applicant.

Background

1. By application received on 14 June 2023, the Applicant originally sought a payment order against the Respondent in the sum of £3,500 in respect of rent arrears. Supporting documentation was submitted with the application, including a copy of the tenancy agreement and a rent statement.
2. Following further procedure, the application was subsequently accepted by a Legal Member of the Tribunal acting with delegated powers from the Chamber President who issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations on 8 August 2023. Attempted notification of the application was made to the Respondent, together with the date, time and arrangements

for a Case Management Discussion (“CMD”) due to take place on 6 October 2023. That CMD was postponed as service of papers had not been made on the First Respondent, who had by then vacated the Property. The Second Respondent, who had also vacated, was traced to an alternative address and the Sheriff Officers were able to serve the papers there on 5 September 2023, although it appeared that the new address was not a permanent, full-time address. A fresh CMD was scheduled to take place on 18 December 2023. Apart from service on the Second Respondent by Sheriff Officer (as above), Service on both Respondents was made by advertisement on the Tribunal’s website; email notification was also sent to the First Respondent regarding this. No representations were lodged by either Respondent prior to the CMD.

3. By email dated 1 September 2023, the Applicant’s representative amended the application in order to increase the sum sought to £5,600, and lodged an updated Rent Statement in support.

Case Management Discussion

1. The CMD took place by telephone conference call on 18 December 2023 at 10am. It was attended by Mr Neil Dymock of Dymock Properties on behalf of the Applicant. The Tribunal delayed the commencement of the CMD for 5 minutes to give the Respondents an opportunity to join late but they did not do so.
2. Following introductions and introductory comments by the Legal Member, Mr Dymock advised that the Respondents had indeed vacated the Property and returned the keys by posting them through the letterbox. As they are no longer in situ, Mr Dymock confirmed that the conjoined application for eviction under reference FTS/HPC/CV/23/1946 was no longer necessary and could be withdrawn.
3. Mr Dymock was asked to address the Tribunal on the payment application. He confirmed that the sum sought was £5,600 per the updated rent statement lodged. There was discussion regarding the date the Respondents had vacated, Mr Dymock stated that the Respondents had vacated without notice and had just contacted them and told them they had moved out and had posted the keys to the Property through the letterbox. Mr Dymock stated that this was around the end of September but, on being advised that the Sheriff Officers who had attempted service of the papers had advised the Tribunal that the Property was vacant early in September 2023, Mr Dymock confirmed that the claim for payment should be adjusted to cover the period to the end of August 2023, namely £4,900. Mr Dymock confirmed that the rent was £700 per month and that the Respondents have not paid any rent at all for the Property, nor paid the deposit of £700 mentioned in the tenancy agreement. In explanation, Mr Dymock advised that the Applicant had originally been self-managing the Property, had not obtained any payments up-front from the Respondent and had been let down by them. Dymock Properties had subsequently taken over management of the Property and had attempted to contact and engage with the Respondent on several occasions regarding the rent arrears but to no avail.

4. The Tribunal Members indicated that a payment order in the sum of £4,900 would be granted and Mr Dymock was thanked for his attendance.

Findings in Fact

1. The Applicant is the owner and the landlord of the Property.
2. The Respondent was the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 30 January 2023.
3. The Respondent vacated the Property at some point prior to 5 September 2023, without giving notice.
4. The rent due in respect of the tenancy was £700 per calendar month.
5. The Respondent made no rental payments at all in respect of the Property and did not pay a deposit.
6. The Applicant's agent attempted to contact the Respondent about the arrears but the Respondent did not engage at all.
7. The Respondent remained in occupation of the Property until in or around August 2023 and then vacated, without notice.
8. The rent arrears outstanding when this application was submitted to the Tribunal on 14 June 2023 amounted to £3,500 and amounted to £4,900 by the time the Respondent vacated.
9. The Respondent has not submitted any written representations, nor sought time to pay, in respect of this Application.
10. The Respondent did not attend the CMD.
11. The sum of £4,900 is due and resting owing by the Respondent to the Applicant in respect of rent arrears incurred during the tenancy in terms of this application and has not been paid by the Respondent.

Reasons for Decision

1. The Tribunal considered all of the background papers, including the application and supporting documentation and the oral submissions made by the Applicant's representative at the CMD. The Tribunal noted that no representations had been made by the Respondent and that they did not attend the CMD, having been properly and timeously notified of same by way of Sheriff Officer (Second Respondent only) and advertisement on the Tribunal website for the requisite period from 6 November 2023 to 18 December 2023 inclusive,

conform to Certificate of Service by Advertisement dated 18 December 2023. The Tribunal was satisfied that the application on behalf of the Applicant to increase the sum sought had been made timeously in terms of the Regulations and, accordingly, the Tribunal permitted said amendment to be made.

2. The Tribunal considered that there was nothing to contradict the information from the Applicant and therefore no requirement to continue the application to an Evidential Hearing. The Tribunal was satisfied that the sum of £4,900 was due and resting owing by the Respondent in respect of unpaid rent due to the Applicant and that, in the circumstances, a payment order in terms of the amended application could properly be made at the CMD.

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.



Legal Member/Chair

18 December 2023
Date