



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) 2016 Act

Chamber Ref: FTS/HPC/CV/23/2610

Re: Property at 13 Finlaggan Place, Dundee, DD4 9JS (“the Property”)

Parties:

Alan Roger Finlay, Fiona Finlay, 520 Perth Road, Dundee, DD2 1PL (“the Applicants”)

Dale Melville, whose current address is unknown; and Louise Campbell, 22 Mauchline Terrace, Dundee, DD4 8FA (“the Respondents”)

Tribunal Members:

Joel Conn (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. This is an application by the Applicants for civil proceedings in relation to a private residential tenancy in terms of rule 111 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”), namely an order for payment of rent arrears. The PRT in question was by the Applicants to the Respondents commencing on 20 September 2018.
2. The application was dated 3 August 2023 and lodged with the Tribunal on that date. The application sought payment of arrears of £3,484.62 (being the arrears due as of 1 August 2023) and was accompanied by a rent statement showing six missed rental payments of £580.77/month during a period between 1 March and 1 August 2023. The rent stated in the Tenancy Agreement lodged was £550 a month but we received oral submissions at the case management

discussion (“CMD”) that the rent had been validly increased prior to 1 March 2023 to £580.77 a month.

3. Prior to the CMD we received from the Applicants’ agent an Inventory of Productions with an updated rent statement dated 11 January 2024, showing no further rent payments had been received and that monthly rent was said now to have increased to £598.19 a month. The total arrears as of 11 January 2024 was said to be £6,458.15, being eleven unpaid months since 1 March 2023. A proposed amendment was also lodged, referring to the increased arrears and seeking interest on any order at 8% per annum.

The Hearing

4. The matter called for a CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 26 January 2024 at 10:00. We were addressed by Calvin Gordon, solicitor, Thorntons Law LLP and by the first Applicant. The second Applicant was also present on the call but did not address us. There was no appearance from either of the Respondents.
5. We were informed by the clerk that no contact had been received from the Respondents (or on their behalf) with the Tribunal. Intimation of an earlier (but then discharged) CMD diet was undertaken against the second Respondent by Sheriff Officer instructed by the Tribunal, and there had then been intimation of this diet by recorded delivery letter (which had been signed for). Both intimations had been made to the second Respondent’s new address. We were therefore satisfied that the second Respondent had received sufficient intimation and remained at an address other than the Property. The Sheriff Officer seeking to intimate the original CMD diet reported that the first Respondent was not at the Property and intimation of this diet was undertaken by service by advertisement in normal form.
6. The Applicants’ agent said that no communication had been received from either Respondents recently. Communication from the second Respondent in July 2023 had confirmed that she had new accommodation and that she no longer resided at the Property. The Applicants’ agent stated that neighbours had reported that the first Respondent had abandoned the Property but the Applicants had not confirmed (to their satisfaction) that he was not returning from time to time.
7. We considered that the Respondents had received appropriate intimation of the CMD. In the absence of any attempt by the Respondents to make contact with the Tribunal, and having not commenced the CMD until around 10:10, we were satisfied to consider the application in the Respondents’ absence. In any case, no attempt was made by either of the Respondents (nor anyone on their behalf) to dial in late to the CMD.
8. At the CMD, the Applicants’ agent confirmed that the application for an order for payment was still insisted upon and at the amended amount. We were

addressed on this application and on a conjoined application for an order for eviction (EV/23/2609). We refer to our Decision in the eviction application in regard to the issues arising as to when the Tenancy ended but, in summary, on the evidence presented, and reasonable inferences from the evidence, it suggested to us that section 50 may have already operated to bring the Tenancy to an end by, at least, 15 July 2023 (when the Notice to Leave that had been served on the Respondents had expired, and they both appeared to have ceased to occupy the let property). The Applicants accepted that the second Respondent had vacated the Property at least by July 2023 (but probably by September 2022) but that the first Respondent had never confirmed his position. They suspected he had not returned since July 2023 but could not be certain.

9. We adjourned to consider the matter and on recommencing we asked the Applicants to address us on further procedure in light of our discussions. We explained that, on the information available to us at present, in regard to the eviction application we required under section 51(4) of the 2014 Act to come to a determination as to the date the tenancy ended and, based on the information available us, we could only determine that this date was 15 July 2023, being the day after the expiry of the Notice to Leave as it appeared that at that date both Respondents (whether intentionally or not) had ceased to occupy and thus the date that the Tenancy ended under section 50. On that basis, no rent could be due after that date. We thus sought the Applicants' views on whether they wished a continuation to provide further evidence (in the eviction application) of occupancy after 15 July 2023. We would thus continue this application on arrears along with it. The Applicants' agent and the first Applicant discussed matters briefly and confirmed that they did not seek further time and were content with an order under section 51(4) in the terms proposed.
10. No motion was made for expenses. In terms of the amendment, interest was sought at 8% per annum.

Findings in Fact

11. On or about 10, 11 and 13 September 2018 the Applicants let the Property as a Private Residential Tenancy to the Respondents under a lease with commencement on 20 September 2018 ("the Tenancy").
12. In terms of clause 7 of the Tenancy Agreement, the Respondents required to pay rent of £550 a month in advance on the 1st day of each month.
13. Prior to March 2023, the Applicants increased the passing rent due each month, by appropriate procedures, to a figure of £580.77.
14. The Respondents have failed to make payments of rent of £580.77 a month on 1 March, 1 April, 1 May and 1 June 2023.
15. The Respondents have failed to make any payment of rent for July 2023.
16. Pro-rated rent for 1 to 15 July 2023 is £281.02.

17. The Respondents provided no evidence of payment of any part of the said unpaid rent demanded by the Applicants.
18. The first Respondent has received intimation of the date of the CMD through service by advertisement.
19. The second Respondence has received intimation of the date of the CMD by recorded delivery letter.

Reasons for Decision

20. The application was in terms of rule 111, being an order for civil proceedings in relation to a PRT. We were satisfied, on the basis of the application and supporting papers, that there were rent arrears and that no payment of rent had been made since 1 March 2023.
21. In terms of our Decision in the eviction application EV/23/2609 we held the Tenancy to come to an end on 17 July 2023. The sum sought by the Applicants as unpaid rent was in excess of the rent due in terms of the Tenancy.
22. No defence was made by the Respondents to any part of the application. (There was no appearance or defence to a conjoined application for eviction either.)
23. We were satisfied that there was unpaid rent of £2,604.10 for the period in the lease to 15 July 2023 and it all remained outstanding as of today. We were satisfied that the necessary level of evidence for these civil proceedings had been provided for an order at this figure.
24. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. We were thus satisfied to make a decision at the CMD to award the sum of £2,604.10 against the Respondents, being an order for rent arrears under the Tenancy to the termination date separately determined to be 15 July 2023. We were satisfied to grant the amendment regarding interest and to make such an interest award.

Decision

25. In all the circumstances, we were satisfied to make the decision to grant an order against the Respondents for payment of £2,604.10 with interest at 8% per annum from the date of the order.

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.



26 January 2024

Legal Member/Chair

Date