



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

Reference number: FTS/HPC/CV/24/0957

Re: Property at Flat 4, 244a High Street, Kirkcaldy, KY1 1JT (“the Property”)

Parties:

Ad Astra Assets Ltd, a company incorporated under the Companies Acts and having their registered office at Zenlet Unit 15 Evans Business Centre, Mitchelston Drive, Kirkcaldy, United Kingdom, KY1 3NB (“the Applicants”)

David Thomson, residing at Flat 4, 244a High Street, Kirkcaldy, KY1 1JT (“the First Respondent”)

Tribunal Members:

Paul Doyle (Legal Member)

Mary Lyden (Ordinary member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be made.

Background

1. The Applicant sought an order for payment of rental arrears totalling £1,845.29. The Applicant had lodged with the Tribunal Form F dated 26/02/2024. The Applicants lodged with the Tribunal Form F dated 26/02/2024. The documents produced were a Tenancy Agreement; a notice to leave served on 24/01/2024, a Notice in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 and a schedule of unpaid rental. A copy title sheet was lodged with the Tribunal which showed that the applicant is the heritable proprietor of the Property.

2. By interlocutor dated 19/03/2024, the application was referred to this tribunal. On 11/06/2024 the First-tier Tribunal for Scotland (Housing and Property Chamber) served notice of referral on both parties, directing the parties to make any further written representations. On 01/07/2024 the applicant’s representative made

representations seeking to amend the sum applied for. No representations have been made by the respondent.

Case Management Discussion

3. A case management discussion took place by telephone conference at 2.00pm on 16 July 2024. The applicants were represented by Mr A Stewart of Gilson Gray LLP. The respondent was neither present nor represented. The case file discloses that the respondent has had timeous intimation of the date, time, and method of joining the hearing.

Findings in Fact

4. The Tribunal made the following findings in fact:

(i) The Applicants and the Respondent entered into a Private Residential Tenancy Agreement for the Property on 13/06/2023.

(ii) The rent in terms of the Tenancy Agreement was £330.00 per month.

(iii) Since October 2023 the respondent had not paid the full monthly rental. At the date of application and at today's date the respondent has been in arrears of rent for more than three consecutive months. At the date of application, there were rent arrears totalling £1,515.29. At today's date, the rent arrears total £3,495.29.

(iv) The applicant wants to amend the sum claimed by increasing the sum applied for from £1,845.29 to £5,268.40 in terms of rule 13 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. That application is unopposed.

(v) £1,773.11 of the sum sought as the amended figure of claim represents the fees the applicant has paid their solicitors in pursuit of this application.

(vi) Clause 8 of the lease between the parties includes the following

The Tenant shall be held liable for any further reasonable costs incurred by the Landlord through the Tenant's failure to pay rent on time, including, but not limited to, any administrative charges or late fees made by the Landlord's bank, any expenses incurred by the Landlord in pursuing the Tenant for payment of said unpaid rent, legal or otherwise.

(vii) Rule 40 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 says

40.—(1) The First-tier Tribunal may award expenses as taxed by the Auditor of the Court of Session against a party but only where that party through unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense.

(2) Where expenses are awarded under paragraph (1) the amount of the expenses awarded under that paragraph must be the amount of expenses required to cover any unnecessary or unreasonable expense incurred by the party in whose favour the order for expenses is made.

Reasons for decision

5. We explained to the applicant's representative that we do not have difficulty increasing the sum sued for to the correct amount of arrears of rental, which at today's date is £3,495.29, but we are concerned about the attempt to recover legal fees on a contractual basis. The relevant part of clause 8 of the lease is vague. The documents produced do not properly vouch the charges made by the applicant's solicitor.

6. The applicant's representative took instructions, and then restricted the proposed amendment to the sum of £3,495.29 (representing arrears of rental only) together with interest at 8% per annum.

7. The sum applied for is amended to £3,495.29.

8. The respondent offers no resistance to the application for a payment order. On the facts as we find them to be, the respondent owes the applicant £3,495.29 in unpaid rental.

9. For the foregoing reasons, the Tribunal determined to make an Order for payment subject to time to pay directions. The Tribunal makes an order for payment of £3,495.29 with interest at 8% per annum from today's date until payment.

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: *Paul Doyle*

Date: 16th July 2024

