



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/23/4087

Re: Property at 10K Craufurdland Road, Kilmarnock, KA3 2HT (“the Property”)

Parties:

Mr David Cavanagh, 12 Union Street, New Mills, KA16 9AZ (“the Applicant”)

Mr Mariusz Biniak and Mrs Katarzyna Wit Biniak, 10K Craufurdland Road, Kilmarnock, KA3 2HT (“the Respondents”)

Tribunal Members:

Shirley Evans (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment against the Respondents in favour of the Applicants in the sum of SEVEN THOUSAND FOUR HUNDRED AND FIFTY-ONE POUNDS (£7451) STERLING. The order for payment will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondents.

Background

1. This is an action for recovery of rent arrears raised in terms of Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
2. The application was accompanied by a copy of a tenancy agreement dated 19 October 2016 between the Applicant and the Respondents, an AT5 dated 17 October 2015, letters to the Respondents in English and Polish dated 18 and 25 October 2023 and 3 November 2023, post office receipts dated 26 October 2023 and 3 November 2023, Royal Mail Track and Trace receipts

dated 27 October 2023 and 6 November 2023, a rent statement and bank statements.

3. On 19 June 2024, the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 29 July 2024. The Respondents required to lodge written submissions by 10 July 2024. This paperwork was served on the Respondents by Chelsea Murray, Sheriff Officer, Glasgow on 20 June 2024 and the Execution of Service was received by the Tribunal administration.
4. The Respondents did not lodge any written representations by 10 July 2024.
5. On 19 July 2024 the Applicant emailed the Tribunal with a rent statement to the 18 July 2024 showing arrears of £7451 and an email dated 4 January 2024 from PCKwikFix advising the Respondents’ email address no longer existed.

Case Management Discussion

6. The Tribunal proceeded with the CMD on 29 July 2024 by way of teleconference. The Applicant appeared and represented himself. He was supported by his colleague Allison Patterson. There was no appearance by or on behalf of the Respondents despite the teleconference starting 5 minutes late. The Tribunal was satisfied the Respondents had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in his absence. The case was heard with an application for eviction under reference FTS/HPC/EV/24/4084.
7. The Tribunal had before it the tenancy agreement tenancy agreement dated 19 October 2016 between the Applicant and the Respondents, an AT5 dated 17 October 2015, letters to the Respondents in English and Polish dated 18 and 25 October 2023 and 3 November 2023, post office receipts dated 26 October 2023 and 3 November 2023, Royal Mail Track and Trace receipts dated 27 October 2023 and 6 November 2023, a rent statement and bank statements. The Tribunal considered the terms of these documents.

8. The Applicant explained his letting agent communicated in both English and Polish with the Respondents. He had had no rent paid since October 2023. With reference to the rent statement lodged the Tribunal noted the monthly rent was £575 in terms of the tenancy agreement and that the arrears to 18 July 2024 stood at £7451.
9. Mr Cavanagh understood the Respondents had separated and that Mr Biniak still lived in the Property. They had two young children. There had been no issues with the tenancy when the Respondents were together. He was not aware of any outstanding benefits issues. The arrears were causing him stress and anxiety and he just wanted to sell the Property now.

Findings in Fact

10. The Applicant entered into a Short Assured Tenancy Agreement dated 19 October 2016 commencing on 30 October 2016 with the Respondents.
11. In terms of Clause 3.1 of the Short Assured Tenancy Agreement the Respondents agreed to pay rent of £575 per month. The rent has not increased since then.
12. The Respondents have accrued rent arrears The Respondent are in arrears of £7451 to 18 July 2024. as at the date of the application.

Reasons for Decision

13. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the submissions made by Mr Cavanagh.
14. The Tribunal noted terms of the tenancy agreement and the rent statement lodged which set out how the arrears had arisen and showed the total arrears to £7451 to 18 July 2024. The Applicant produced evidence of persistent non- payment of rent. The Respondents had not disputed the application. The Tribunal was satisfied on the basis of the documents lodged, together with Mr Cavanagh's submissions that the order for payment in favour of the Applicant be granted for the sum of £7451, the Tribunal allowing amendment in terms of Rule 14A of the Regulations.

15. The Tribunal granted an order for payment of £7451. The decision of the Tribunal was unanimous.

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.

Shirley Evans

29 July 2024

Legal Member

Date