



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/23/4305

Re: Property at 3 Huntlyhill Steading, Brechin, Angus, DD9 7PU (“the Property”)

Parties:

Stracathro Estates Ltd, Brae of Pert Office, Laurencekirk, AB30 1QR (“the Applicant”)

Mr Andrew Simpson, 10D High Street, Brechin, DD9 6ER (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order be granted in favour of the Applicant and against the Respondent in the sum of Five thousand Nine Hundred and seventy two pounds only (£5972.00)

Background

1. This application for a payment order in terms of Rule 111 of the Tribunal Rules of procedure was first lodged with the Tribunal on 30th November 2023 and accepted by the Tribunal on 29th April 2024. A case management discussion was fixed for 17th July 2024 at 1130 am.

The Case Management Discussion

2. The Applicant was represented by Mr Whittle Solicitor of R & R Urquhart LLP and Mr Campbell Adamson a director of the Applicant company was also in attendance. There was no appearance by or on behalf of the Respondent and the Tribunal noted that the application, supporting papers and the date of the case management discussion had been intimated to the Respondent by Sheriff officer serving the papers

on the Respondent's daughter personally on 17th June 2024. The Tribunal was satisfied that the Respondent had received fair notice of the application and case management discussion and that it was appropriate to proceed in his absence.

3. The Tribunal had sight of the application, a tenancy agreement, e mails, customer ledger cards, and information from Sheriff Officers. The application had requested the sum of £ 4620, being the rent arrears at the time of submission of the application and a sum equivalent to the rent and heating and hot water costs due in terms of the tenancy until the Applicant landlord recovered possession of the property. The Applicant was now seeking a payment order in the sum of £5972.00.

4. The parties had entered into a tenancy agreement at the property with effect from 25th October 2021 and the monthly rent was initially £515. The tenancy agreement made provision for payment of heating and hot water at the rate of £80 per month as well as the rent payments and the agreement indicated that this price could be reviewed annually upwards by 1.5% above the percentage increase in the retail price index from the last review.

5. Mr Whittle advised the Tribunal that that Applicant had originally applied for an eviction order and the application was at an advanced stage when the Respondent left the property and that application was withdrawn. The Respondent left the property in January 2024 and the Applicant was seeking outstanding rent arrears and heating and hot water costs accrued up to that time.

6. Mr Whittle explained that this was a property which the estate would generally rent out to young working families at a lower rent than the wider rental market as part of a community housing project. Over the period of this tenancy rent arrears and arrears for heating and hot water costs had started to accrue from November 2022 and this continued through 2023. Payments were made on some occasions, or were made after they were due or were paid in instalments. No rent or payments for heating and hot water costs been paid by the Respondent since August 2023.

7. Mr Whittle and Mr Campbell Adamson explained that the figures in the rent ledger were different on some months as the rent had been increased at the end of 2022 and the charge for heat and water had also increased meaning that after November 2022 the payments which had been £515 and £80, making a total of £595 were increased to £571 and £88 making a total of £659. In December 2023 a small increase had been applied to the charge for heat and water giving monthly total due by the Respondent of £676.

8. The Tribunal was advised that the Respondent was repeatedly chased up regarding the rent arrears and arrears for heat and hot water costs. A number of attempts had been made to arrange a payment plan to repay the arrears. A plan had been drawn up which the Respondent followed for a month then all payments had stopped. All letters sent to Respondent offered discussion about the rent and arrears for other costs. The Respondent had offered £50 per month extra to cover the outstanding balance but this had not been kept up at all. It was understood that the Respondent was in employment in construction throughout the tenancy. A deposit had been paid by the Respondent at the start of the tenancy and the Applicants had applied to have it returned to them but this was still with one of the tenancy deposit schemes and had

not been returned. If it was returned some of it would be required to be attributed to damage at the property which had occurred during the tenancy.

9. Mr Whittle requested that the Tribunal award the sum of rent arrears and other costs accrued to the time when the Respondent vacated the property submitting that the Respondent knew the level of the sums outstanding as he was made aware of the arrears each time a monthly invoice was sent and the tribunal application indicated that the Applicant would be looking for the rent arrears at the time of submission and the sums due until the property was recovered. Mr Whittle submitted that fair notice had been given to the Respondent that a greater sum would be requested than the amount first specified in the application.

10. The Tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

11. The parties entered into a tenancy agreement at the property with effect from 25th October 2021.

12. As well as the monthly rent payable of £515, the Respondent was initially required to pay £80 per month for heat and hot water costs at the property in terms of this agreement,

13. The tenancy agreement allowed for both the rent and the heat and hot water charge to be increased each year, the agreement specifying that the heat and hot water charge could be increased annually upwards by 1.5% above the percentage increase in the retail price index from the last review.

14. In December 2022 the monthly rent was increased to £571 and the heat and hot water charges were increased to £88 per month giving monthly costs payable by the Respondent of £659 in terms of the tenancy agreement,

15. In December 2023 a small increase was applied to the costs payable by the Respondent for heating and hot water giving a monthly total of £676 to be paid by him in terms of the tenancy agreement.

16. Arrears in terms of rent and heat and hot water costs accrued from November 2022 and no payments at all were made from August 2023 by the Respondent.

17. The Respondent vacated the property in January 2024 when the arrears for both rent and heat and hot water payments had reached £5972.

18. The Applicants regularly contacted the Respondent regarding the rent, heat and hot waters costs outstanding and monthly invoices were sent but the arrears were not paid.

19. The Respondent had offered to pay £50 per month towards the arrears during the tenancy but this payment plan for the arrears was not adhered to.

20. The sum of £5972 is lawfully due by the Respondent to the Applicant in terms of rent arrears and arrears for heat and hot water costs incurred and not paid during the tenancy as required by the tenancy agreement.

Reasons for Decision

21. The Tribunal was satisfied that it was reasonable to grant a payment order given the history of non-payment and the failure by the Respondent to adhere to a payment plan. The Tribunal was satisfied that it was appropriate to grant an order in the total sum outstanding when the Respondent vacated the property as the application gave fair notice to the Respondent that an order would be requested for the arrears accrued at the date of application and also requested arrears up to the point that the property was recovered which was in January 2024.

Decision

The Tribunal determined that a payment order be granted in favour of the Applicant and against the Respondent in the sum of Five thousand Nine Hundred and seventy two pounds only (£5972.00)

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.

Valerie Bremner

17/7/24

Legal Member/Chair

Date