



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/3104

Property at 9 Rosevale Street, Cresswell, Dumfries, DG1 2EP (“the Property”)

Parties:

Mr Anton Watson as Executor of Dina Watson deceased , 47 Castledykes Road, Dumfries, DG1 4SN (“the Applicant”)

Mr Brian McGee, 9 Rosevale Street, Cresswell, Dumfries, DG1 2EP (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order for the sum of £10,115.38 should be granted in favour of the Applicant.

Background

1. The Applicant seeks a payment order in relation to unpaid rent. A tenancy agreement and rent statement were lodged with the application.
2. A copy of the application was served on the Respondent and parties were notified that a case management discussion (“CMD”) would take place on 8 December 2023 by telephone conference call. The Applicant notified the Tribunal that the Tribunal paperwork wrongly identified the Respondent as Connor McGee. As there was insufficient time to amend the paperwork to the correct name and re-serve the application, the CMD was postponed. The parties were notified that a CMD would take place by telephone conference call on 11 April 2024 at 2pm.

3. As a result of administrative oversight, the application paperwork was not re-served on the Respondent. This was not noted by the Tribunal until shortly before the CMD.
4. The CMD took place on 11 April 2024 at 2pm. The Applicant was represented by Ms Dalgliesh, solicitor. The Respondent did not participate and was not represented.
5. The Legal Member of the Tribunal advised Ms Dalgliesh that the application had not been re-served, due to administrative oversight. As a result of this error, the CMD would require to be continued to a later date. Ms Dalgliesh told the Tribunal that the Respondent is still in occupation of the property and that the arrears have increased. She requested an early date for the continued CMD.
6. The application was re-served on the Respondent by Sheriff Officer on 30 July 2024. The parties were notified that a CMD would take place by telephone conference call on 28 August 2024. Prior to the CMD the Applicant submitted a certificate of confirmation as a link in title between the now deceased owner of the property, Dina Watson, and the Applicant who is her Executor. An updated rent statement was also submitted with a request to amend the sum claimed to £10,115.38.
7. The CMD took place on 28 August 2024. The Applicant was again represented by Ms Dalgliesh. The Respondent did not participate and was not represented.

Summary of discussion at the Case Management Discussion

8. The Tribunal noted that the Applicant has made the application in his capacity as Executor of the late owner's estate. Following discussion, Ms Dalgliesh confirmed that she wished to amend the name of the Applicant to reflect this. The Tribunal noted that the Applicant has lodged an updated rent statement. Ms Dalgliesh said that this had also been sent to the Respondent by ordinary first-class post and first class recorded delivery post. The Tribunal allowed the application to be amended to reflect the sum specified in the updated statement.
9. Ms Dalgliesh told the Tribunal that the Applicant has been told by a third party that the Respondent may have moved out of the property. However, he has been unable to verify this as the Respondent has failed to respond to attempts to contact him and has not returned the keys or given notice. She also told the Tribunal that the Applicant has had some health issues and wants to sell the property due to the administrative burden of being a private landlord. It is his only rental property and was his mother's home. It is understood that the Respondent lives at the property alone. It is not known whether he has any health or other issues, as he has failed to engage, and the Applicant does not know if he is working or in receipt of benefits. He has paid no rent since January 2024 and the sum now due is £10,115.38

Findings in Fact

10. The Applicant is the Executor of the owner of the property and is the landlord.
11. The Respondent is the tenant of the property in terms of an assured tenancy agreement.
12. The Respondent is due to pay rent at the rate of £400 per month.
13. The Respondent owes the sum of £10,115.38 in unpaid rent to the Applicant.
14. The Respondent has paid no rent since January 2024.

Reasons for Decision

15. The Tribunal is satisfied that the Respondent owes the Applicant the sum of £10,115.38 in unpaid rent and that the Applicant is entitled to an order for payment for this sum.
16. The Applicant seeks interest at the rate of 4% in terms of Rule 41(1) and 2(b) of the Tribunal Procedure Rules 2017. The Tribunal is satisfied that the Applicant is entitled to interest at this rate from the date of this decision.

Decision

17. The Tribunal determines that an order for payment should be granted against the Respondent.

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.

