



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) Act 2016

Chamber Ref: FTS/HPC/CV/24/1485

Re: Property at Flat 2/1, 11 Napier Drive, Glasgow, G51 2LP (“the Property”)

Parties:

Mr Alisdair McKay and Mrs Margaret Clare McKay, 2 Stuart Street, Ardersier, Inverness, IV2 7QL (“the Applicants”)

Mr Martin Esler and Miss Nicola Jessica Cantrill, 32 Seamill Street, Glasgow, G53 7AY (“the Respondents”)

Tribunal Members:

Gillian Buchanan (Legal Member)

Decision (in absence of the Respondents)

At the Case Management Discussion (“CMD”), which took place by telephone conference on 30 October 2024, the Applicants were present. The Respondents were neither present nor represented and had lodged no written representations.

The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) had been satisfied relative to the Respondent having received notice of the CMD and determined to proceed in the absence of the Respondent in terms of Rule 29.

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

Background

The Tribunal noted the following background:-

- i. The Applicants are the heritable proprietor of the Property.
- ii. The Applicants leased the Property to the Respondents in terms of a Private Residential Tenancy Agreement (“the PRT”) that commenced on 30 October 2020.
- iii. The rent payable in terms of the PRT is £575 per calendar month.

- iv. The PRT required that the Respondent pay a deposit of £575.
- v. The sums said to be due in terms of the application are £2981.

The CMD

At the CMD the Applicants made the following representations:-

- i. The PRT ended on 23 March 2024 when the Respondents vacated the Property.
- ii. The rent increased from £589 to £606 per month with effect from 1 December 2023. Around 18 months previously the rent increased from £575 per month to £589 per month.
- iii. With regard to the deposit of £575 this was recovered in full from the Tenancy Deposit Scheme without objection from the Respondents. These sums were offset in full against the costs of repairing damage to the Property.
- iv. The Applicants seek a payment order.
- v. The Applicants had previously obtained a payment order from the Tribunal for arrears to 30 September 2023. Accordingly, their claim in this application is in respect of sums due from 1 October 2023 to 23 March 2024.
- vi. The Tribunal noted the claim to include Late Payment Charges in terms of Clause 9 of the PRT, being 5 such charges of £25 each. The Applicants explained this clause had been added on the advice of their letting agent. No payments had been received from the Respondents since November 2023. The Applicants had been put to a lot of time and trouble.

Findings in Fact

- i. The Applicants leased the Property to the Respondents in terms of the PRT.
- ii. The rent payable in terms of the PRT was £589 per calendar month during October and November 2023 and £606 per month thereafter.
- iii. The rent arrears due by the Respondents to the Applicants are £2856.
- iv. The deposit paid by the Respondents has been recovered by the Applicants from the Tenancy Deposit Scheme and offset against the costs of repairing damages to the Property.

Reasons for Decision

The Respondents did not submit any representations to the Tribunal and did not attend the CMD. The factual background narrated by the Applicants within the application papers and orally at the CMD was not challenged and was accepted by the Tribunal.

The Tribunal determined that the unpaid rent outstanding and due by the Respondent to the Applicant is £2856.

The Tribunal was not prepared to make an order in respect of the Late Payment Charges which were arbitrary and akin to a penalty, and did not reflect any loss actually sustained by the Applicants as a result of the rent not being paid.

Decision

The Tribunal granted a payment order in favour of the Applicant in a sum of £2856.

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.

G Buchanan

Legal Member/Chair

30 October 2024
Date