



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/23/3924

Re: Property at Flat 0/5, 2 Hanson Park, Glasgow, G31 2HA (“the Property”)

Parties:

Mr Kenneth Kennedy, Mrs Margaret Kennedy, Rannoch, The Lane, Dullatur, G68 0AU (“the Applicant”)

Mr Robert Hann, Ground 1, 519 Alexander Parade, Glasgow, G31 3EP (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment in the sum of Ten thousand two hundred and ninety six pounds (£10296) Sterling

Background

1. By application to the Tribunal the Applicants sought an order for payment against the Respondent in respect of unpaid rent arrears in the sum of £10296 under Rule 70 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”) and section 16 of the Housing (Scotland) Act 2014. In support of the application the Applicants provided a copy of the tenancy agreement between the parties and a rent statement.
2. By Notice of Acceptance of Application a Legal Member of the Tribunal with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. The application was therefore referred to a Case Management Discussion (“CMD”) on 10 September 2024, to take place by teleconference. Notification was sent to the parties in accordance with Rule 17(2) of the Rules of Procedure. Said notification together with a copy of the

application paperwork was served upon the Respondent by Sheriff Officers. Both parties were invited to make written representations in advance of the CMD.

3. On 27 August 2024 the Tribunal received an email from the Respondent requesting a postponement of the CMD on medical grounds. The Respondent provided medical evidence in support of this. The request was intimated to the Applicants. On 30 August 2024 the Tribunal received an email from the Applicants opposing the request. The Applicants provided evidence in support of their opposition in the form of copy communications between the Applicants and the Respondent, and photographs of alleged damage to the property.
4. On 4 September 2024 the Tribunal received a further email from the Respondent with various screenshots of communications between the Applicants and the Respondent. The Respondent alleged that there had been problems with the boiler and the rent arrears had not been calculated correctly on the basis that the Respondent was paying rent on a four weekly basis.
5. On 9 September 2024 the Tribunal notified the parties that the postponement request had been granted. The Tribunal further advised that it would expect the Respondent to attend, or be represented, at the next CMD. The Tribunal subsequently issued a Direction on 17 September 2024 requiring the Respondent to submit a written response to the application no later than 14 days prior to the adjourned CMD.
6. On 1 October 2024 the Tribunal received various documents from the Respondent including photographs of a hospital setting, website excerpts referencing the Landlord and Tenant Act 1985, photographs of the property and copy communications between the Applicants and the Respondent.
7. The CMD was rescheduled to take place on 29 November 2024. Notification was issued to the parties under Rule 17(2) of the Rules. On 4 November 2024 the Tribunal received an email from the Respondent requesting a postponement of the CMD, or dismissal of the application, on medical grounds. The Respondent provided medical evidence in support of this but requested that this not be crossed over to the Applicants. The Tribunal intimated the postponement request in general terms to the Applicants. On 19 November 2024 the Tribunal received an email from the Applicants confirming that they wished to proceed with the CMD. They suggested that the Respondent could appoint a representative if he was unable to attend.
8. On 26 November 2024 the Tribunal notified the parties that the postponement request had been refused and the CMD would proceed as scheduled.

The Case Management Discussion

9. The CMD took place on 29 November 2024. The Applicants were both present. The Respondent was not in attendance. The Tribunal noted the terms of the correspondence that had taken place in advance of the CMD and was content that the Respondent was aware of the CMD and the requirement to attend. The Tribunal therefore determined to proceed with the CMD in his absence and in accordance with the overriding objective to avoid delay insofar as compatible

with proper consideration of the issues. Whilst the Tribunal was mindful of the Respondent's medical issues, it had agreed to a previous postponement and the Respondent had been given clear direction to attend the rescheduled CMD or arrange for a representative on his behalf. The Tribunal considered it would therefore be in the interests of justice to proceed as any further delay would be prejudicial to the Applicants who had clearly expressed their wish to continue with the application.

- 10.** The Tribunal proceeded to hear submissions from the Applicants. For the avoidance of doubt the following is a summary of what was discussed and does not constitute a verbatim account of the proceedings, only those matters relevant to the Tribunal's determination of the application.
- 11.** The Applicants advised that they sought a payment order in the sum of £10296. They made reference to the rent statement produced with the application. The Respondent had been a tenant since 2014 and had always paid his rent on time. However payments had stopped in 2022. Prior to that the Respondent had asked if he could pay his rent weekly to suit his financial circumstances, which the Applicants had agreed to on a temporary basis. In June 2022 the Applicants' mortgage term was about to expire and they required access to the property to undertake various surveys. The Respondent had thought this meant they were selling the property and he stopped paying his rent. He would not allow access to contractors until the very last minute. The Applicants understood he had been experiencing issues in his personal life. He had a falling out with his partner at the time. There had been some violent incidents which resulted in the door of the property being kicked in and a window broken. The Applicants had to repair the damage. The Respondent's behaviour changed. It was stressful for the Applicants. They considered themselves to be good landlords. They had never increased the rent for the property and the rent was a bit below the market rate.
- 12.** With regard to the boiler, the Applicants advised that there was a problem with all of the boilers in the development in that they had internal flues which were now redundant. The boiler had to be replaced as a result. The Applicants owned other properties in the development. All of the boilers had to be replaced. The work was completed to a high standard and the Respondent appeared delighted with it. He even tipped the gas contractor. With regard to the Respondent's written representations, the Applicants explained that a gas engineer had carried out an initial visit to the property. They found that the boiler had been tampered with. The safety covering had been removed, perhaps in an attempt to bypass the meter. The engineer was therefore unable to certify the boiler. It was subsequently replaced within a couple of weeks after that. The Applicants confirmed that the Respondent was never left without heating and hot water. He had access to electric heaters and an electric shower. The gas supply would only have been disrupted for one day.
- 13.** The Applicants explained that the Respondent had subsequently indicated to them that he would begin paying rent again. He acknowledged that he was in rent arrears. However no payments were forthcoming. The Respondent had left the property on 11 December 2023 of his own accord. He had changed the

locks therefore the Applicants had incurred costs in accessing the property. They also found extensive damage and there were utility bills outstanding in the name of someone other than the Respondent. It appeared that he may have been subletting the property.

Findings in Fact

14. The Applicants and Respondent entered into a tenancy agreement in respect of the property which commenced on 13 June 2014.
15. In terms of Clause 2 of the said tenancy agreement the Respondent undertook to pay rent at the rate of £660 per calendar month.
16. The tenancy between the parties terminated on 11 December 2023.
17. As at the date of termination of the tenancy arrears in the sum of £10296 were outstanding.
18. Despite repeated requests the Respondent has refused or delayed in making payment of the sum due.

Reasons for Decision

19. The Tribunal reached its decision taking into account the application paperwork, the representations from the parties and the verbal submissions at the CMD. The Tribunal was satisfied that it had sufficient information to reach a decision following the CMD. The written representations from the Respondent did not disclose any arguable defence in the view of the Tribunal. There were therefore no issues to be resolved that would require a hearing to be fixed.
20. The Tribunal accepted, based on its findings in fact, that the Respondent was liable to pay the sum of £10296 to the Applicant under the terms of the tenancy agreement. Whilst the Respondent had made reference to problems with the boiler, he had not provided any evidence to substantiate his claim that this amounted to a stateable defence to the application. The Applicants had provided a credible explanation for the photographs of the boiler provided by the Respondent. The Tribunal accepted that the boiler was replaced due to the changes in building regulations regarding internal flues, and that at no point was the Respondent denied access to heating or hot water. The Tribunal also accepted that the rent statement provided by the Applicants was an accurate account of the payment history of the tenancy. It noted the rent as due on a monthly basis in accordance with the terms of the tenancy agreement, not on a four weekly basis as had been alleged by the Respondent in his written representations.
21. The Tribunal therefore made an order for payment in the sum of £10296 against the Respondent in favour of the Applicant.

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.

R. O'Hare

9 December 2024

Legal Member/Chair

Date