



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) Act 2016

Chamber Ref: FTS/HPC/CV/21/0130

Re: Property at Balegra Farm, Shannochie, Isle of Arran, KA27 8SH (“the Property”)

Parties:

Mr Alan McGrath, 2 Glen Court, Brodick, Isle of Arran, KA27 8BP (“the Applicant”)

Mr Jeremy Nicholson and Mrs Pauline Nicholson, Balegra Farm, Shannochie, Isle of Arran, KA27 8SH (“the Respondents”)

Tribunal Members:

David Preston (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the Respondents):

The First-tier Tribunal for Scotland (Housing and Property Chamber) determined that an order for payment of the sum of SEVENTEEN THOUSAND TWO HUNDRED POUNDS (£17,200) be granted in favour of the applicant.

Background:

1. By application dated 19 January 2021 the applicant applied to the tribunal for an order for payment of the sum of £17,200 in respect of arrears of rent accrued to 1 January 2021.
2. The relevant papers before the tribunal comprised:
 - a. Private Residential Tenancy Agreement;
 - b. email correspondence between the parties in respect of commencement of tenancy dater 4 and 5 February 2019;
 - c. Rent Statement covering the period 1 February 2019 to 1 January 2021;
 - d. Title Information relative to the property – BUT5189;
 - e. Sheriff Officer’s Report dated 18 March 2021 and Certificates of Service dated 15 March 2021 confirming service of a full set of papers on the respondents;

- f. Emails from the respondents dated 3 and 5 April 2021 incorporating their written representations;
 - g. Three emails from the respondent dated 11 April 2021 with accompanying photographs;
 - h. Undated statement from applicant;
3. By Decision dated 8 March 2021, a Convener of HPC having delegated power for the purpose, referred the application under rule 9 of the Rules to the tribunal.

Case Management Discussion

4. On 14 April 2021 a CMD was convened by telephone in terms of the Notice of Intimation. Ms Quirk, Solicitor, Paterson Holms was in attendance on behalf of the applicant. There was no appearance by or on behalf of the respondents by 10.10am.
5. Notice of the CMD had been served on the respondents together with a full set of papers relating to the application. The tribunal was satisfied that due notice had been given to the respondents to which they had responded in writing but had failed to attend the CMD, and they had therefore voluntarily waived their right to attend or be represented. The tribunal was content to proceed in their absence.
6. Ms Quirk confirmed that the position with regard to arrears of rent remained as was evident from the Rent Statement. No further payment of rent had been made after 7 November 2019 leaving a balance outstanding of £17,200. She advised that although further arrears had accrued until the respondents' removal and that the applicant would incur additional expense in clearing the property and the car's which had been left, he did not seek to increase the sum sought in this application.
7. The tribunal noted the terms of the statement submitted by the respondents on 5 April 2021. The statement stated that the respondents did not pay the December [2019] rent to get the attention of the landlord. It also said that the respondents had decided to take care of the property and put the money that they would have paid in rent into the upkeep of the house and ground. They made no offer to provide evidence of any such work having been carried. They did not produce or refer to any correspondence with the applicant in respect of their intentions or to obtain applicant's authority to carry out any work to the property. The tribunal did not consider that the photographs submitted demonstrated any basis upon which the respondents would be entitled to withhold rent, at least without advising the applicant or obtaining his agreement to their off-setting such expenditure against any rent due to him.
8. The tribunal established that the deposit in terms of the tenancy agreement of £1100 had been placed with Safe Deposits Scotland with whom it remained. The applicant would seek to recover the deposit in accordance with its procedures.

Reasons for Decision:

9. Rule 17 of the Regulations states that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision. The tribunal decided that, on the basis of the information presented to it, it was able to determine the application at the CMD.
10. The tribunal was satisfied that arrears of rent accrued to 1 January 2021 amounted to £17,200 and that the respondents had made no payment to the applicant since November 2019.
11. The representations submitted by the respondents provided no defence to the non-payment of rent.
12. Accordingly, the tribunal determined to grant the Order for Payment in the sum of £17,200.

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.

David Preston

14 April 2021