



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

Chamber Ref: FTS/HPC/CV/20/0438

Re: Flat 5/18, Sailmaker Row, Edinburgh EH6 7JR (“the property”)

Parties:

Leith Links NHT 2011 LLP, 19 West Tollcross, Edinburgh EH3 9QN (“the applicants”)

Mr Livio Callanoda Rocha Flat 5/18, Sailmaker Row, Edinburgh EH6 7JR (“the respondent”)

Tribunal Member:

Adrian Stalker (Legal Member)

Decision (in absence of the respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the sum sought by the applicants, being £1,468.96, was lawfully due by the respondent, and granted an order for payment of that sum, by the respondent, to the applicants.

Background

1. In June 2016, the applicants let the property to the respondent, under a short assured tenancy. The parties entered into a written tenancy agreement, which was executed on 11 May 2016. Clause 5 of the agreement provides that the initial monthly rent is £625.26. It further states that rent reviews will take place, with effect from 1 April, each year. Clause 8 states that heating and hot water are supplied by a communal boiler, with each flat in the building having its own meter. It further obliges the tenant to pay charges for the use of heating and hot water. The process of assessing the charges and billing the tenant is delegated to a managing agent, Insite Energy Ltd. Under clause 8, the tenant is obliged to pay the sums billed by them.

2. By applications dated 7 February 2020, the applicants sought an order for recovery of possession under section 33 of the Housing (Scotland) Act 1988 (“the Act”), and an order for payment of £1,468.96, being arrears of rent (£916.41) and charges due under clause 8 of the parties’ agreement (£552.55).

3. The paper apart explained that the rent had been increased to £642.96 per month on 1 April 2017, to £671.59 per month on 1 April 2018, and to £692.39 per month on 1 April 2019. Copies of the letters intimating those increases were provided with the application. The paper apart also explained that the true balance due by the respondent under clause 8 was £2,141.26. However, the Tribunal had already granted an order for payment against the respondent (CV/18/3304) of £1,588.71, leaving the balance of £552.55.

4. Attached to the application was a rent account, and an account from Insite Energy. The rent account showed a balance of due of £224.02 as at 23 January 2020. As at the 7 February, the balance was £916.41, as a further payment of rent was due on 1 February. The Insite Energy account showed the balance due of £2,141.26.

5. The application under section 33 is FTS/HPC/EV/20/0436. Reference is made the Tribunal’s decision in relation to that case, also dated 9 July 2020.

6. On 21 February 2020, notice of acceptance was granted by a legal member. A Case Management Discussion (“CMD”) was fixed for 25 March 2020, at Riverside House, Georgie Road, Edinburgh, in respect of both applications. However, due to the restrictions imposed as a result of the Coronavirus Pandemic, this was postponed. Another hearing was fixed, by teleconference call, at 10am, on 9 July 2020. This was intimated by letter to both parties.

The CMD

7. The CMD duly took place, by teleconference call, on 9 July 2020. Miss McQuarrie, solicitor, of Messrs TC Young, agents for the applicants, appeared on their behalf.

8. As at 10:10am, neither the respondent, nor any person appearing on his behalf, had entered the teleconference. Accordingly, the respondent did not appear, and was not represented, at the CMD. The Tribunal member had sight of a Royal Mail track and trace record which showed that a letter, intimating the date and time of the CMD to the respondent, had been signed for, on 23 June. The respondent has not, at any time, played any active role in the proceedings relating to this application, or the eviction application. He made no representations to the Tribunal, in advance of either of the scheduled CMDs.

9. Under rule 17(4) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, the First-tier Tribunal may do anything at a

CMD which it may do at a hearing, including: hearing the case in the absence of one of the parties (rule 29), and making a decision. In the circumstances, the Tribunal was satisfied, under rule 29, that it was appropriate to proceed with the hearing, in the respondent's absence.

Findings in fact, and in fact and law; reasons for decision

10. Miss McQuarrie explained that, since the date of the application, the total balance due by the respondent had increased. However, the applicants had not sought to amend the application or produce up-to-date figures. They were content to seek an order for the amount outstanding at the date of the application.

11. Accordingly, the Tribunal was asked to granted an order for payment of £1,468.96, on the basis of the information and papers contained in the application, as already described. In light of the documents produced, and in the absence of any representation by the respondent to the contrary, the Tribunal was satisfied that that this sum was lawfully due.

Decision

12. The Tribunal accordingly granted an order for payment in the sum of £1,468.96.

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.

Adrian Stalker

Legal Member

Date: 9 July 2020