



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/19/0730

Re: Property at 9 Rires Road, Leuchars, Fife, KY16 0EE (“the Property”)

Parties:

Mrs Grace Lewis-Flannigan, 7 Wellington Square, Waddington, Lincoln (“the Applicant”)

Miss Tracey Mill, 9 Rires Road, Leuchars, Fife, KY16 0EE (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatrige (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment of £4,058.06 by the Respondent.

Background:

The application was made on 5 March 2019 by the Applicant’s representatives Rollos Law. The application asked for a payment order to be made for unpaid rent as at the date the Respondent is evicted as per the attached rent statement and tenancy agreement.

A Case Management Discussion (CMD) was scheduled for 26 June 2019. The Respondent did not attend the CMD on 26 June 2019 and the Tribunal at that date was advised the tenant had moved out of the property on 25 May 2019. The Tribunal at that stage allowed amendment to the amount sought in the application to £4,908.06 as per the updated rent statement produced at that date. The Applicant’s representative could not produce a forwarding address at that stage. The CMD note and directions of 26 June 2019 are referred to for their terms and held to be incorporated herein.

A further CMD was scheduled for 16 September 2019 and the Respondent made aware of the date and time and venue by Service by Advertisement in terms of Rule

6A of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (the Rules).

No representations were received from the Respondent. The Respondents had not contacted the Tribunal prior to the CMD and did not attend.

The Tribunal was satisfied that he had been appropriately notified of the application and the CMD.

The Case Management Discussion

The Respondent did not attend. The Applicant did not attend but was represented by Mr Shearer from Rollos Law. Also in attendance was Mr Shannon from the Rollos Letting Agents who had managed the property.

On behalf of the Applicant an updated rent statement was lodged showing that the deposit of £850 had been released in full and thus the sum of £850 had been used to reduce the amount of arrears to £4,058.06. The Applicant was thus seeking a payment order for the amount of £4,058.06.

When the Tribunal asked for proof that the tenant would have been aware of this demand Mr Shearer was able to produce the email from the Respondent dated 24 May 2019 which confirmed that the Respondent had agreed to the end date of the tenancy being 28 May 2019, confirming that she was aware that the duty to pay rent as per the rental agreement continued to that day. He advised the Tribunal that no further payments had been received since the application was made. The Respondent had not contacted the Applicant. He referred the Tribunal to the documents lodged with the application, which are referred to for their terms and held to be incorporated herein. There were no representations from the Respondent.

Findings in Fact:

- 1. The parties entered into a Private Residential Tenancy for the property with a start date of 25 October 2019 and a monthly rent of £850 payable in advance on or before the 27th day of each month.**
- 2. The Respondents moved out of the property on 25 May 2019.**
- 3. As per the rent statement lodged by the Applicant, at the time the tenancy ended the arrears were £4,908.06.**
- 4. The Deposit of £850 was released to the Applicants and applied to the rent arrears figure.**
- 5. The arrears at the date of the CMD are £4,058.06.**

Reasons for Decision

The Tribunal considered that the facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;
- (b) identifying what facts are agreed between the parties;
- (c) raising with parties any issues it requires to be addressed;
- (d) discussing what witnesses, documents and other evidence will be required;
- (e) discussing whether or not a hearing is required; and
- (f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Power to determine the proceedings without a hearing

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

- (a) may make a decision without a hearing if the First-tier Tribunal considers that—
 - (i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and
 - (ii) to do so will not be contrary to the interests of the parties; and
- (b) must make a decision without a hearing where the decision relates to—
 - (i) correcting; or
 - (ii) reviewing on a point of law, a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

The documents lodged are referred to for their terms and held to be incorporated herein.

The Respondent had not attended either CMD and had not lodged any defence to the application. The facts are not disputed.

The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case.

The monthly rent for the property was agreed at £850. The last rental payment was received on 28 November 2018 as per the rental statement lodged. Since then no further payments have been received.

The Respondent had confirmed the end date of the tenancy to be 28 May 2019 and thus is aware that the amount of rent until that day had to be paid. The sum of rent charged for the month of May had been reduced pro rata by the Appellant to the date the Respondent vacated the property.

The Respondent had accrued rent arrears, under deduction of the released deposit, of the amount of £4,058.06. This sum remains outstanding at the date of the CMD.

No further payments have been received. No representations were received from the Respondent and the sum due is not disputed.

Decision

The Tribunal grants an order for payment of the sum of £4,058.06.

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.

P. Hennig - McFatrige

Legal Member

Date

16.9.19