



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) Act 2016

Chamber Ref: FTS/HPC/CV/21/1121

Re: Property at 78 TR Clepington Road, Dundee, DD3 7SW (“the Property”)

Parties:

Mr Stephen Reid, 51 Myrtlefield Park, Belfast, BT9 6NF (“the applicant”)

Mr Raymond Carr, 3 Parkside, Meigle, Blairgowrie, Perthshire, PH12 8RZ (“the respondent”)

Tribunal Members:

David Preston (Legal Member) and Elaine Munroe (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment by the respondent to the applicant of the sum of ONE THOUSAND SEVEN HUNDRED AND FIFTY POUNDS and 80 pence (£1750.80) should be made.

Background:

1. By application dated 11 May 2021 the applicant applied for an order for payment in respect of arrears of rent amounting to £1750.80.
2. The papers before the tribunal comprised: Tenancy Agreement dated 23 October 2017; rent statement; representations from the respondent; further representations from the applicant’s agents including emails between them and the applicant dated 20 December 2017 and 8 March 2018.
3. Following a Case I Discussion (CMD) on 8 September 2021 a full hearing of the application was fixed for 14 October 2021 at 1000am. Present on the telephone at the hearing were: Ms Hazel Young of Rockford Properties representing the applicant; and the respondent.

Hearing

4. Reference was made to the email correspondence submitted by the applicant's agent. The respondent's position was that he had written to Rockford Properties on 20 December 2017 advising that due to an injury and the loss of his income he was no longer able to maintain rental payments and asked for advice as to how to proceed as he intended to give up the lease. He said that he received a telephone call from Rockford Properties in which he was advised that everything would be sorted and not to bother about further rent. Neither party was able to produce any note of that telephone call. Ms Young maintained that as the respondent had entered into a fixed term agreement, he would have been advised that he was liable for rent for the full period or until the property was re-let.
5. The representations before the tribunal indicated that the keys had been returned to Rockford Properties on 21 February 2018 and the respondent acknowledged that he had vacated the property shortly before that date.
6. Ms Young confirmed that the property had been re-let from 28 June 2018 and the rent up to that date comprised the amount sought in the application. It was noted that the deposit had been returned recovered and applied to the arrears.

Findings in Fact

7. The parties entered into a Short Assured Tenancy Agreement from 23 October 2017 to 22 August 2018 at a rent of £435 per month.
8. The respondent advised Rockford Properties on 20 December 2017 that he intended to bring the tenancy to an end early and sought advice as to how to proceed. He last paid rent on 27 December 2017.
9. The respondent vacated the property on 21 February 2018.
10. Rockford Properties wrote to the respondent on 8 March 2018 advising of his liability for rent until the property was relet. However, the respondent denies having received that email and asserted that it had gone into his junk mail.
11. There was no further correspondence from Rockford Properties to the respondent until 9 August 2021 when the application and papers were served on him by Shelf Officers.
12. The deposit of £510 had been applied to arrears of rent.

Reasons for Decision:

13. Having entered into a fixed term tenancy until 22 August 2018 the respondent was due to pay rent until that date or, in the event of an earlier termination of the lease, up to the point when he vacated the property and it had been re-let.

14. It is unfortunate that, having sought advice in his email of 20 December 2017 no evidence could be produced of any such advice having been given and the next substantiated communication from Rockford Properties to him was not sent until 8 March 2018, which he maintained was not received by him as he alleged it had gone to his junk mail. However, the function of the tribunal in terms of this application is to apply the law in relation to liability for rent under the terms of the agreement. It is also unfortunate that no further communication had been sent in respect of the arrears of rent.
15. The respondent referred to a telephone call with Rockford Properties in which the early termination of the lease was discussed. He said he was told that it would be alright and not to bother about the ongoing rent. The tribunal notes from the Rent Statement that there were no arrears on 17 December 2017. Ms Young was unable to be certain about what had been discussed but the tribunal did not find it credible that they would not look for rent until the property was relet and therefore found that it was more likely than not that Rockford Properties told the respondent that he would continue to be responsible for the rent until the property was relet. That is what was said in their email to him of 8 March 2018 and as a letting agent they would be unlikely not to seek such rent. Quite why Rockford properties were unable to produce a note or record of the call is inexplicable. Similarly, the tribunal found it difficult to understand why they did not pursue the respondent for 3 years. However, these facts in themselves do not absolve the respondent of his liability for the rent lawfully due either until the expiry of the period of the lease or the reletting of the property.
16. It is also unfortunate that the letting agent was unable to produce any evidence by way of telephone notes to confirm what action, if any, had been taken following upon the respondent's email of 20 December 2017. He sought advice and was entitled to have been given such advice. However, it is not for this tribunal to make any determination about the quality of service provided by the letting agent.
17. Accordingly, the tribunal determines that respondent was responsible for rent until the date when the property was re-let, namely 28 June 2018 in the sum of £1750.80.

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
Legal Member

17 October 2021