



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/19/1143

Re: Property at Ardhuncart Lodge, Kildrummy, AB33 8PQ (“the Property”)

Parties:

Ardhuncart Trust Estate, C/O Strutt and Parker, 68 Station Road, Banchory, AB31 5YJ (“the Applicant”)

Mr Antonio Trombetta, Ardhuncart Lodge, Kildrummy, AB33 8PQ (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Elizabeth Williams (Ordinary 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 Six thousand nine hundred and fifty pounds (£6950) together with interest at the rate of five per cent above the Bank of England base rate per annum from the date of order until payment

Background

- 1** By application dated 9 April 2019 the Applicant applied to the Tribunal for an order for payment of outstanding rent arrears in the sum of £5,100.
- 2** By Notice of Acceptance of Application dated 30 April 2019 the Legal Member with delegated powers of the Chamber President determined there were no grounds for rejection of the application. A Case Management Discussion was therefore assigned for 19th June 2019.

The Case Management Discussion

- 3** The Case Management Discussion took place on 19 June 2019. The Applicant was represented by Ms Leanne Imlach of Strutt and Parker. The Respondent was personally present.
- 4** In response to a request from the Applicant intimated in accordance with Rule 14 of the First-tier Tribunal Housing and Property Chamber Procedural Rules 2017 as amended the Legal Member agreed to amend the application to include a claim for interest on the outstanding rent arrears in the sum of £27 and legal fees incurred by the Applicant in the sum of £1717.20. The sum sought by the Applicant was therefore amended to £6,944.20.
- 5** The Respondent confirmed at the Case Management Discussion that a payment had been made towards the rent arrears on 16th April 2019. A further payment would be made prior to 2 July 2019 in the sum of £5200 to clear the balance of arrears, together with an advance payment towards the next months rent. The Respondent advised that due to a client not complying with money laundering regulations his bank account had been frozen and he had been unable to pay the rent as a result. However this had now been sorted and he would be in funds by 30th June.
- 6** The Legal Member therefore fixed a hearing in the matter.
- 7** Following the Case Management Discussion, Ms Imlach contacted the Tribunal by email dated 16th July 2019 to advise that no payment had been received from the Respondent. The Applicant was therefore seeking to increase the arrears sought to the sum of £6950. There were no further representations from the Respondent.

The Hearing

- 8** The Hearing took place on 1st August 2019 at the Credo Centre, Aberdeen. The Applicant was again represented by Ms Imlach. The Respondent was not present. The Tribunal was satisfied that the Respondent had received proper notification of the Hearing, having been present at the Case Management Discussion on 19th June. The Tribunal was therefore satisfied that it could proceed in the absence of the Respondent.
- 9** Ms Imlach advised that no payment had been made towards the arrears since 16th April 2019. There had been no contact from the Applicant, however she understood that he was still residing at the property.
- 10** Ms Imlach submitted an updated rent account which showed a balance of rent arrears in the sum of £6950. The Tribunal therefore agreed in terms of Rule 14A of the Procedural Rules to amend the Applicant's claim to reflect the updated balance.

- 11 The Tribunal then questioned Ms Imlach regarding the claim for interest on the balance of arrears. Ms Imlach accepted that there was nothing in the tenancy agreement that explicitly applied liability to the Respondent for those costs. However the Applicant had historically sought interest on outstanding rent arrears. The Tribunal advised that it would be within its power to award interest on an order for payment. Ms Imlach confirmed she would be seeking such an award on the Applicant's behalf, at the rate of compound interest at 5% above the Bank of England base rate.
- 12 The Tribunal also questioned Ms Imlach on the claim for legal fees. Ms Imlach confirmed that solicitors had been instructed to clarify the ownership of the property in response to the application before the Tribunal. The Applicant was therefore seeking to recover this cost. Ms Imlach did concede that the work undertaken would apply to any future applications before the Tribunal.
- 13 The Tribunal thereafter adjourned to consider the submissions on behalf of the Applicant before confirming its decision.

Findings in Fact and Law

- 14 The Applicant and Respondent entered into a Private Residential Tenancy Agreement dated 14 March 2018.
- 15 In terms of Clause 8 of the said Tenancy Agreement the Respondent agreed to pay rent of £1700 per month.
- 16 On or around 14 May 2019 the Applicant and Respondent agreed a rent increase of £50 per month. The rent from 14 May 2019 was therefore agreed at £1750 per month.
- 17 The Respondent has failed to make payment of rent lawfully due under the terms of the said Tenancy Agreement. The outstanding sum as at 1st August 2019 is £6950.
- 18 The Respondent is not liable under the terms of the said Tenancy Agreement for payment of interest on unpaid rent.
- 19 The Respondent is not liable under the terms of the said Tenancy Agreement for payment of the Applicant's legal fees.
- 20 The Respondent is therefore liable for the sum of £6950.

Reasons for Decision

- 21 The Tribunal was satisfied having regard to the application paperwork and the verbal submissions at both the Case Management Discussion and the Hearing that it was able to make a fair determination of the application.

- 22 The Tribunal noted the submissions from the Respondent at the Case Management Discussion. He had not sought to dispute that the arrears were due. He had offered to make payment within a fixed timescale however the payment had not been forthcoming. He had then failed to take the opportunity to attend the hearing.
- 23 The Tribunal therefore accepted that the rent arrears were lawfully due and that the Applicant was entitled to an order for payment of the updated balance in the sum of £6950.
- 24 The Tribunal was not however satisfied that there was any legal basis upon which the Applicant could seek interest on the balance of arrears. Nor was the Tribunal satisfied that the Applicant could seek payment of the legal costs in clarifying the position regarding ownership. The Tribunal was conscious that the Tenancy Agreement was silent on both matters and there was therefore no contractual obligation on the Respondent to pay these costs. The Tribunal noted that the Applicant had not engaged solicitors in the proceedings before it and it did not therefore have cause to consider whether an order for legal expenses was justified in respect of those proceedings.
- 25 The Tribunal was however content to award interest in terms of the order for payment at the rate of five per cent per annum above the Bank of England base rate.
- 26 The Tribunal therefore made an order for payment in the above terms.

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.

Ruth O'Hare
Legal Member/Chair

Date

11/8/19