



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016 and Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (the “Regulations”)

Chamber Ref: FTS/HPC/CV/19/2993

Re: Property at 45C Bruce Street, Bellshill, ML4 1PW (“the Property”)

Parties:

TCIB LLP t/a Newkeylets, 119 Main Street, Wishaw, ML2 7AU (“the Applicant”)

Mr Vincent Edward Lee, 44 Kirklee Road, Bellshill, ML4 2QW (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order in favour of the Applicant against the Respondent for payment in the sum of £830 should be made.

Background

1. By application dated received on 25 September 2019, the Applicant applied to the Tribunal for a payment order in the sum of £830 against the Respondent. The application stated that the Respondent owed the sum of £830 in respect of unpaid rent for the property in his capacity as guarantor. A copy of the lease and a statement of rent account were submitted in support of the Application.
2. On 11 October 2019, a Legal member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.

3. On 23 October 2019, a copy of the application and supporting documentation was served on the Respondent by Sheriff Officer at the address specified for him in the lease. Both parties were notified of the date, time and location of the Case Management Discussion ("CMD") and notified that any written representations in respect of the application should be submitted to the Tribunal by 13 November 2019. No written representations were received.

Case Management Discussion

4. The application called before the Legal Member of the Tribunal for a CMD on 25 November 2019 at 11.30am at Glasgow Tribunal Centre. Mr Andy Smith, a partner in the Applicant's business Newkeylets was in attendance. The Legal Member delayed the commencement of the CMD for a few minutes to allow for late arrival by the Respondent but he did not attend.
5. Mr Smith addressed the application and answered questions from the Legal Member. He confirmed that the payment order sought against the Respondent is £830 and that this is in respect of two months' rent arrears accrued by the tenants in respect of their lease of the property from the Applicant, in respect of which the Respondent had signed the lease as guarantor. He made reference to the lease and the statement of rent account. He confirmed that the lease commenced on 21 May 2019, that the tenants made payment of their first rental payment of £415 that date and thereafter, a further months' rental payment of £415 on the due date of 21 June 2019. Further monthly rental payments of £415 were due on 21 July and 21 August 2019 but were not made. They total £830 which is the sum claimed. Mr Smith advised that the Applicant contacted the tenants regarding the situation but no further payments were received and the tenants subsequently absconded from the property, leaving the property damaged, without giving notice and leaving no forwarding address(s). Mr Smith indicated that he did not know the exact date that they had left the property as the Applicant only visited the property once the tenants stopped answering their calls. Mr Smith advised that the Applicant contacted the Respondent, the guarantor in terms of the lease, but he refused to divulge the forwarding address(s) of the tenants or to make payment of the outstanding rent owing by the tenants, despite the personal guarantee he had signed in terms of the lease. Mr Smith stated that he contacted the Respondent again by telephone today before the CMD and that the Respondent stated that he was not coming to the CMD and would not be making payment. Mr Smith confirmed that no further payments had been received and that the sum of £830 remains outstanding.
6. The Legal Member referred Mr Smith to Clause 7 of the lease and pointed out an apparent discrepancy in the figures stated in respect of rent, in that the monthly rent was initially stated to be £285 but later in that clause was stated to be £415. Mr Smith confirmed that the rent was definitely £415 and that the first rental figure stated of £285 is an error in the wording of the lease. He submitted that the further references to the monthly rental figure in that clause are to the sum of £415 and also, with reference to the statement of rent account, it can be seen that the tenants made the initial two monthly

payments in the sum of £415 so they also clearly understood the monthly rental payments to be £415.

Findings in Fact

7. The Applicant is the landlord of the property.
8. The property was leased to the tenants, Natasha Lindsay and Thomas Swan by virtue of a Private Residential Tenancy dated and commencing on 21 May 2019.
9. The Respondent had also signed the lease as guarantor in terms of Clause 36 of the lease in which he guaranteed, *inter alia*, all payments of rent due to the landlord which the tenants were required to pay under the lease.
10. The tenants occupied the property from 21 May 2019 until they left the property without giving notice to the Applicant sometime around August 2019 (exact date unknown).
11. The rent in terms of the lease was £415 per calendar month, payable in advance on the 21st of the month.
12. The tenants made two monthly rental payments of £415 on 21 May 2019 and 21 June 2019. Subsequent payments due on 21 July and 21 August 2019 were not made and remain outstanding.
13. The Applicant has been unable to pursue the tenants in respect of the outstanding rent as their forwarding address(s) have not been disclosed to the Applicant.
14. The Respondent has been called upon to pay the outstanding sum of £830 on behalf of the tenants in respect of the guarantee he signed in respect of the lease. He has failed to do so.
15. The sum of £830 remains outstanding.

Reasons for Decision

16. The Respondent did not submit any written representations to the Tribunal and did not attend the CMD, having been properly and timeously notified of same. There was accordingly no issue taken and no contradictory evidence put forward in respect of the application by the Respondent.
17. The Legal Member was satisfied from the information contained in the application and supporting documentation, together with the oral submissions made by the Applicant's representative at the CMD that the sum claimed in respect of unpaid rent of £830 remains outstanding and, in the circumstances,

is due to be paid by the Respondent in terms of the personal guarantee he provided to the Applicant in terms of the lease which guarantee was incorporated in and signed by him as part of the lease.

18. The Legal Member therefore concluded that the application does not require to go to an evidential hearing and that an order could be made at the CMD in terms of Rule 18 of the Regulations for payment to the Applicant in the sum of £830.

Decision

19. The Legal Member accordingly determines that an order for payment by the Respondent in the sum of £830 should be made in favour of the Applicant.

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.

Nicola Weir

Legal Member/Chair

25 November 2019
Date