



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 70(1) of the Private Housing (Tenancies) (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/19/3003

Re: Property at 1 Buckie Close, Bridge of Don, Aberdeen, AB22 8DJ (“the Property”)

Parties:

Mrs Gladys Parker, 10 Lochinch Grove, Cove, Aberdeen, AB12 3QU (“the Applicant”)

Miss Emily Victoria Howie, residing at 131 Simpson Road, Bridge of Don, Aberdeen, AB23 8HL (“the First Respondent”)

Mr Rhys Butler, whose present whereabouts are unknown (“the Second Respondent”)

Tribunal Members:

Ruth O'Hare (Legal 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 against the Second Respondent in the sum of Three thousand, five hundred and ninety six pounds and eight pence (£3,596.08) Sterling

- 1 By application dated 12 September 2019 the Applicant sought an order for payment of rent arrears against the Respondents in respect of rent arrears arising from their tenancy at the Property. In support of the application the Applicant provided the following documents:-
- (i) Tenancy Agreement between the parties dated 31 May 2017 and 1 June 2017;
 - (ii) Rent Statement from 1 February 2018 to 31 May 2018;
 - (iii) File notes from the Applicant's Agent regarding the tenancy;
 - (iv) Reminder letters from the Applicant's Agent to the Respondents;

- (v) Email correspondence between the Applicant's Agent and the Second Respondent;
 - (vi) Copy Notice to Quit and Section 33 Notice served upon the Second Respondent and Sheriff Officers invoice in respect of costs of service;
 - (vii) Tracing information from Scott and Co, Sheriff Officers.
- 2 By Notice of Acceptance of Application dated 14th October 2019 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 28 November 2019.
- 3 Service of the application paperwork was attempted at the Respondents' former address at 7 Mugiemoos Drive, Bucksburn by Sheriff Officers. It was noted that the Respondents had since vacated that property and a new tenant had taken up occupation. The Case Management Discussion was therefore adjourned to 9 January 2020. The First Respondent was subsequently traced to her new address at 131 Simpson Road, Aberdeen and service was effected upon her by Sheriff Officers, with the date, time and location of the Case Management Discussion. The First Respondent denied any knowledge of the location of the Second Respondent. The Case Management Discussion was therefore adjourned again to the 3 March 2020 for service to be effected upon the Second Respondent by advertisement on the Tribunal website. Service took place between 27 January 2020 and 3 March 2020. The First Respondent was advised of the date, time and location of the adjourned Case Management Discussion by first class mail.
- 4 Following service of the application the Tribunal received email correspondence from the First Respondent advising that she had signed a Protected Trust Deed on 4th November 2019. The Tribunal subsequently received correspondence from Campbell Wallace Fraser Ltd with a copy of the trust deed.

The Case Management Discussion

- 5 The Case Management Discussion took place on 3 March 2020. The Applicant was present. Neither Respondent was present.
- 6 The Legal Member was satisfied that the Respondents had received proper service of the application paperwork together with notice of the date, time and location of the Case Management Discussion and therefore determined to proceed in their absence.
- 7 The Applicant explained that she did not expect either Respondent to turn up. She noted that the First Respondent had signed a Protected Trust Deed and the Legal Member explained the effect of this. The Applicant explained that

the Second Respondent had paid the rent in any event, and had been pursued by her letting agent. She had put the First Respondent on the lease as she was also residing in the property. The Applicant was therefore content to accept an order against the Second Respondent alone. The Applicant further explained the difficulties she had faced trying to obtain payment of the rent. She had no option but to pursue an application to the Tribunal.

Findings in Fact and Law

- 8 The parties entered into a Short Assured Tenancy Agreement in respect of the property, the term of which was 1st June 2017 to 31 May 2018.
- 9 In terms of the said Tenancy Agreement the Respondents undertook to make payment of rent at the rate of £1,000 per month.
- 10 The Respondents were jointly and severally liable under the terms of the Tenancy Agreement.
- 11 As at 31st May 2018, arrears of rent in the sum of £3,432.27 were outstanding.
- 12 The Applicant incurred the cost of £60.84 in respect of the fee for serving notices by Sheriff Officers on the Respondents as a result of the failure to make payment of rent. The Respondents are liable to pay this sum under Clause 4.3 of the Tenancy Agreement.
- 13 Under Clause 4.3 of the Tenancy Agreement the Respondents agreed to make payment of interest at the rate of 3% per annum on any outstanding arrears balance. The Respondents are therefore liable to pay the sum of £102.97 to the Applicant in respect of interest on the accrued arrears.
- 14 The First Respondent entered into a Protected Trust Deed on 4th November 2019. The effect of the Protected Trust Deed is that no enforcement action can be taken against the First Respondent for repayment of the debt.
- 15 The Second Respondent is liable to pay the sum of £3,596.08 to the Applicant.
- 16 The Second Respondent agreed to make payment at the rate of £100 per month towards the debt commencing in December 2018. No payments were received.
- 17 Despite repeated requests the Second Respondent has refused or delayed to make payment of the sums due.

Reasons for Decision

- 18 The Tribunal was satisfied on the basis of the information before it that it was able to make a determination of the application at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties. The Tribunal was satisfied that proper service of the application had been effected on both Respondents. Whilst the Second Respondent had been served by advertisement on the Tribunal website, the Tribunal noted that he had previously been in contact with Sheriff Officers regarding the debt and had made promises of payment that had not been honoured. He was therefore aware of his liability and appeared to have conceded that the debt was due. The Tribunal also noted in the email correspondence from the First Respondent that she had alluded to the Second Respondent pursuing a similar route to that which she had followed in terms of a trust deed. This indicated ongoing contact between the Respondents. The Tribunal could therefore reasonably assume that the Second Respondent was aware of the proceedings in some way.
- 19 The Tribunal accepted that, on the basis of the joint and several liability of the Respondents under the terms of the Tenancy Agreement, it was able to make an order against the Second Respondent for the full amount sought by the Applicant. The First Respondent having signed a Protected Trust Deed on 4th November 2019, any enforcement action against her in relation to debt which had incurred in advance of that date would have to cease.
- 20 Having considered the terms of the tenancy agreement and rent statement produced by the Applicant, and based on its findings in fact, the Tribunal was satisfied that the Second Respondent was liable to pay the sum of £3,596.08 to the Applicant in accordance with his obligations under the Tenancy Agreement between the parties and his joint and several liability. The Tribunal accepted that the Respondents had a contractual obligation to make payment of rent at the rate of £1000 per month to the Applicant and had failed to do so. The Tribunal further accepted that the Applicant was entitled to recover interest on the balance of arrears, as well as the costs of pursuing the debt in the form of the Sheriff Officers fee under the terms of Clause 4 of the Tenancy Agreement. The Respondents had not sought to dispute the terms of the application and there was no evidence before the Tribunal to contradict the position put forward on behalf of the Applicant.
- 21 The Tribunal therefore made an order for payment against the Respondent in the sum of £3,596.08.

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

3/3/20
Date