



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)

Chamber Ref: FTS/HPC/CV/19/3048

Re: Property at Flat 132, Cadzow Street, Hamilton, ML3 6HP (“the Property”)

Parties:

Picture Living Investments LP, C/O Touchstone, 2 Crescent Office Park, Clarks Way, Bath, BA2 2AF (“the Applicant”)

Ms Catherine Queen, Flat 132, Cadzow Street, Hamilton, ML3 6HP (“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 £1,035 should be made.

Background

1. By application dated and received 25 September 2019, the Applicant applied to the Tribunal for a payment order in the sum of £1,035 against the Respondent. The application stated that the Respondent owed the sum of £1,035 in respect of unpaid rent for the property. A copy of the lease and a statement of rent account were submitted in support of the application.
2. On 14 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 24 October 2019, a copy of the application and supporting documentation was served on the Respondent by Sheriff Officer at the property address.

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 from the Respondent.

4. On 19 November 2019, the Applicant's representative emailed the Tribunal with an updated statement of rent account and advised that they were seeking to amend the application to increase the sum sued for to £2,005 which they advised is the current balance of the rent arrears. The Tribunal sought to intimate same to the Respondent by Recorded Delivery post on 20 November 2019, the outcome of which is not yet known.

Case Management Discussion

5. The application called before the Legal Member of the Tribunal for a CMD on 25 November 2019 at 2pm at Glasgow Tribunal Centre. Ms Nicola Caldwell from TC Young solicitors attended as local agent for the Applicant's representative, Patten & Prentice LLP. The Legal Member delayed the commencement of the CMD for a few minutes to allow for late arrival by the Respondent but she did not attend.
6. Ms Caldwell addressed the application and answered questions from the Legal Member. She confirmed that the Applicant is proprietor of the property which is leased to the Respondent. The lease which is an assured tenancy commenced on 28 July 2019 and the rental payment was £465 per calendar month. She advised that there has been a pattern of arrears throughout the tenancy and that the amount owing in terms of the application was £1,035 which has now risen to £2,005. She confirmed that there are no benefits in payment to the Respondent, as far as the Applicant's representative is aware, and that the Respondent is a 50 year old female with no dependants. No further payments have been received from the Respondent to reduce the rent arrears since the last payments showing on the statement of rent account.
7. The Legal Member raised the following issues:- that the application had been brought in the name of Picture Living Investments LP but that the title to the property appears to be registered in the name of Places for People Homes Ltd and the lease also specified Places for People Homes Ltd as the landlord; that the lease specifies the rent as being £465 per calendar month, although the application stipulates £485 per month and the statement of rent account refers to rent payments due initially of £465 per month, then £475 and latterly £485; and that the email to the Tribunal in which the Applicant's representative sought to increase the sum sued for was sent on 19 November 2019 which was a shorter period than the minimum 7 working days' notice required by the Tribunal in terms of Rule 13 of the Regulations and also the minimum 14 days' notice specified in Rule 14A of the Regulations which would also have required the Applicant to intimate directly to the Respondent. Ms Caldwell produced a copy letter and AT2 Notice from the Applicant to the Respondent which sought to increase the rent to £485 as from 1 September 2019 but indicated that she did not have additional paperwork in respect of

the previous rental increase to £475. She also sought a short adjournment in order to take instructions from the Applicant's representative in respect of the other matters raised by the Legal Member, which was granted.

8. Following a short adjournment, the CMD resumed. Ms Caldwell explained that the Applicant had bought over a large portfolio of properties from Places for People Homes Ltd and had owned the property since 15 June 2018. The land registration process is still ongoing in this regard and this is why the registered proprietor is still showing as the previous proprietor. As to the application to increase the sum sued for, Ms Caldwell confirmed that her instructions were to seek an order for the increased sum but that it is conceded by the Applicant's representative that sufficient notice has not been given in terms of the Regulations and that they did not intimate their intention directly on the Respondent at an earlier date, etc. Ms Caldwell confirmed that if the Legal Member was not prepared to allow the increase in the sum sued for because of the insufficient notice, her instructions were to move for an order for the original sum claimed to be granted today, as opposed to the CMD being adjourned to a later date to allow timeous intimation to be made on the Respondent.

Findings in Fact

9. The Applicant is the landlord of the property.
10. The property was leased to the Respondent by virtue of an assured tenancy which commenced on 28 July 2017
11. The Respondent still occupies the property.
12. The rent in terms of the lease was £465 per calendar month which the Applicant has sought to increase during the lease to £475 per calendar month and, as from 1 September 2019, to £485 per calendar month.
13. There has been a pattern of rent arrears occurring throughout the tenancy and the last rental payment made by the Respondent was on 7 June 2019.
14. The rental arrears sought in terms of the application amount to £1,035 and that sum remains due and resting owing by the Respondent who has been called upon to make payment but has failed to do so.

Reasons for Decision

15. 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.

16. The Legal Member was not persuaded that it was just to allow the Applicant to amend their written representations or application in order to increase the sum claimed from the Respondent due to insufficient notice having been given to the Tribunal and Respondent prior to the CMD, all in terms of Rules 13 and 14A respectively of the Regulations.
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 terms of the application in respect of unpaid rent of £1,035 remains outstanding and is due to be paid by the Respondent to the Applicant.
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 £1,035.

Decision

19. The Legal Member accordingly determines that an order for payment by the Respondent in the sum of £1,035 should be made in favour of the Applicant.

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment in the sum of £1,035 be made against the Respondent 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