



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/CV/18/3409

Re: Property at 27 Sighthill Neuk, Edinburgh, EH11 4NZ (“the Property”)

Parties:

Mr Graham McNab, Ms Donna McNab, C/o Home Lettings Scotland, 4 Polton Road, Lasswade, EH18 1AA; Gilson Gray LLP, 29 Rutland Square, Edinburgh, EH1 2BW (“the Applicant”)

Miss Tracy McNeil, 27 Sighthill Neuk, Edinburgh, EH11 4NZ (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

BACKGROUND

1. By lease dated 16 October 2017 the Applicants let the Property to the Respondent;
2. Rent was payable in the amount of £1,050.00 per calendar month, payable on the first day of each month and in advance;
3. At the commencement of the lease the sum of £541.94 was paid to cover the rental due in the period from 16 October 2017 until 31 October 2017;
4. The lease made provision for payment of interest at the rate of 8% per annum on late payments;
5. The Respondent fell in to arrears of rent resulting in the Applicants presenting an application to the Tribunal for an order for payment. The application was received on 14 December 2018 and, at that time, the amount due was claimed to be £3,160.00, those arrears accruing in the period between 1 July 2018 and 1 December 2018;

6. A Case Management Discussion was held on 14 February 2019. At that time it was represented to the Tribunal that the Respondent had made payments on 14 December 2018 and 11 January and 8 February 2019, these payments totalling £3,150.00. If those payments were allocated to the oldest debts, as is usual practice, the balance outstanding was only £10.00;
7. The Tribunal was advised that further rental payments had fallen due on 1 January and 1 February 2019 and that those payments were now outstanding. On that basis the legal representative of the Applicants sought an order against the Respondent for payment in the sum of £2,110.00;
8. The application before the Tribunal, however, was for rent arrears accrued during the period from 1 July 2018 and 1 December 2018. By the date of the Case Management Discussion only £10.00 of the sum originally claimed was outstanding. There had been no application to amend the written representations to either vary the amount claimed nor the period covered by the claim;
9. In those circumstances the Tribunal was unable to grant the order now being sought as, while still being an order for payment, it was for payment of a different amount and covering a different period from the application and the Respondent had had no notice of this new claim. In the circumstances, while a balance of £10.00 was outstanding in relation to the original application, the legal representative of the Applicants did not seek an order in that amount. Instead, the Case Management Discussion was continued until 29 March 2019 to enable the written representation to be amended and an updated rent schedule to be presented;
10. Prior to the Case Management Discussion on 29 March 2019 the Applicants intimated an amendment to their written representations to extend the period covered by the arrears to 1 March 2019. An updated rent statement covering the period to 14 March 2019 was also provided. The amount now due was claimed as being £3,160.00, being the rental payments due on 1 January, 1 February and 1 March 2019 plus the £10.00 outstanding from previously;
11. The proposed amendment was intimated to the Respondent by e mail dated 15 March 2019 and separately by recorded delivery post on 15 March 2019, the item being signed for by the Respondent on 16 March 2019;

THE CASE MANAGEMENT DISCUSSION

12. The Applicants did not attend the Case Management Discussion on 29 March 2019 but were represented by Mr S Runciman of GilsonGray, Solicitors Edinburgh. The Respondent failed to attend. The Tribunal was in receipt of an execution of service by sheriff officers confirming that the place, date and time of the Case Management Discussion had been intimated to the Respondent, together with a copy of the case papers. In the circumstances the Tribunal, being satisfied in terms of Rule 24 of The First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (the "FTT Rules") that the Respondent had received reasonable notice of the same determined that it was appropriate to proceed in accordance with Rule 29 of the FTT Rules;

13. Mr Runciman moved to amend the written representations to vary period over which the rent claimed was due. The amount due was the same as the amount originally claimed so no amendment of that part of the application was required. Considering that the Respondent had received timeous notice of the proposed amendment, the Tribunal, in accordance with Rule 13 of the FTT Rules, allowed the amendment;
14. An updated rent statement was produced showing the balance due was £3,160.00. This included the rental payment due on 1 March 2019. The Tribunal was advised no further payments had been received from the Respondent;
15. Discussion took place in relation to the exact amount due as at 29 March 2019, that being the date the Tribunal was being requested to grant an order. The rental payment due on 1 March 2019 was an amount payable in advance and was due to cover the period until 31 March 2019. 2 days of that period (30 and 31 March 2019) had not yet arrived. The Tribunal did not consider it appropriate to make an order for payment in relation to future periods which had not yet arrived;
16. The daily rent was calculated to be £34.52. On that basis, the amount claimed for 30 and 31 March was £69.04. That amount fell to be deducted from the amount claimed. The balance due, therefore, was £3,090.96. Mr Runciman sought an order for payment in that amount;
17. Mr Runciman requested an order for interest at 8% per annum on the sums due also. It was noted that this was specifically provided for within the lease and was therefore contractually due. The Tribunal, accordingly ordered that interest apply to the order granted;

FINDINGS IN FACT

18. The Tribunal made the following findings in fact:-
 - a) By lease dated 16 October 2017 the Applicants let the Property to the Respondent;
 - b) Rent was payable in the amount of £1,050.00 per calendar month, payable on the first day of each month and in advance;
 - c) At the commencement of the lease the sum of £541.94 was paid to cover the rental due in the period from 16 October 2017 until 31 October 2017;
 - d) As at 29 March 2019 the Respondent was in arrears of rent in the sum of £3,090.96;
 - e) The lease made provision for payment of interest at the rate of 8% per annum on late payments;

DECISION

The Tribunal granted an order against the Respondent for payment to the Applicants in the sum of THREE THOUSAND AND NINETY POUNDS AND NINETY SIX PENCE (£3,090.96) STERLING with Interest thereon at the rate of 8% per annum running from 29 March 2019 until payment.

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.

Virgil Crawford

29 March 2019

Legal Member/Chair

Date