



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

Chamber Ref: FTS/HPC/CV/21/0048

Re: Property at 6H Belgrave Mansions, Aberdeen, AB25 2NS (“the Property”)

Parties:

Ms Sue Chappell, c/o 207-211 Rosemount Place, Aberdeen (“the Applicant”)

Mr Daniel Logan, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the Respondent in the sum of £7517.33.

Background

1. By application dated 6 January 2021 the Applicant’s representatives Gilson Gray LLP, Solicitors, Edinburgh applied to the Tribunal for an order for payment by the Respondent in respect of alleged rent arrears arising from the Respondent’s tenancy of the property. The Applicant’s representatives submitted a copy of the tenancy agreement and copy rent statements in support of the application.
2. By Notice of Acceptance dated 20 January 2021 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.
3. Intimation of the CMD was attempted to be served on the Respondent by Sheriff Officers on 28 January 2021 however it was reported that the Respondent had vacated the property prior to Christmas 2020. Arrangements were made for service of the application on the Respondent by way of advertisement on the

Housing and Property Chamber Website. A Certificate of Advertisement dated 23 March 2021 was produced to the Tribunal confirming the application had been advertised from 15 February 2021 until 23 March 2021.

4. By email dated 5 March 2021 the Applicant's representative applied to the Tribunal to increase the sum claimed in respect of rent arrears to £7517.33 and also to include legal expenses of £234.00.

The Case Management Discussion

5. A CMD was held by teleconference on 23 March 2021. The Applicant was represented by Mr Scott Runciman of the Applicant's representatives. The Respondent did not attend nor was he represented. The Tribunal being satisfied that proper intimation having been given by way of advertisement on the Housing and Property Chamber website determined to proceed in the Respondent's absence.
6. The Tribunal noted the terms of the rent statements submitted by the Applicant's representatives. The Tribunal further noted that there had been no communication from the Respondent for some time and that although it appeared he had removed himself from the property he had not returned the keys.
7. The Tribunal noted that Mr Runciman had intimated the proposed amendment of the sum claimed to the Respondent by email on 5 March 2021. Mr Runciman said that there had been no response from the Respondent.
8. The Tribunal queried whether it was appropriate to claim legal expenses given the terms of Section 64 of the Tribunals (Scotland) Act 2014 and Rule 40 of the First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Rules") and given it could not be said there had been any unreasonable behaviour on the part of the Respondent in the conduct of the proceedings. Mr Runciman submitted that there was a contractual agreement between the parties in terms of clause 9 of the tenancy agreement and likened the recovery of reasonable legal expenses to those available under the interest on commercial debt regulations. He explained that his firm charged a fixed fee for these applications and it was reasonable that the Applicant be allowed to recover the cost involved. He asked the Tribunal to grant an order for payment in the sum of £7751.33.

Findings in Fact

9. The parties entered into a Private Tenancy Agreement that commenced on 2 November 2018 at a rent of £650.00 per calendar month.
10. The Respondent removed himself from the property prior to Christmas 2020 but did not return the keys to the property.
11. The Respondent has accrued rent due amounting to £7517.33.

Reasons for Decision

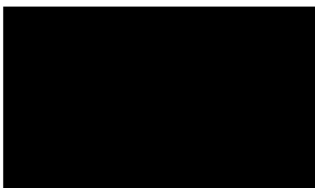
12. The Tribunal was satisfied from the documents produced and the oral submissions that the parties entered into a Private Residential Tenancy agreement that commenced on 2 November 2018 at a rent of £650.00 per calendar month. The Tribunal was further satisfied that the Respondent was due rent amounting to £7517.33 as at 10 March 2021.
13. The Tribunal was satisfied that the Applicant's representatives had properly intimated the proposed amendment of the sum claimed to the Respondent by email on 5 March 2021. The Tribunal therefore allowed the application to be amended in accordance with Rule 14A of the 2017 Rules.
14. The Tribunal was not persuaded that it would be reasonable to grant an order for payment in respect of the sum claimed of £234.00 by way of the Applicants legal expenses. Although Clause 9 of the Tenancy agreement did make some provision for the Applicant claiming reasonable legal costs and expenses, if determined as appropriate the clause was far from clear and in any event the Tribunal was of the view that expenses should only be awarded in tribunal proceedings where there has been unreasonable behaviour by a party in the conduct of the proceedings and that was not the case here. The Tribunal was also not persuaded that there was a correlation between the commercial debt regulations and these proceedings and refused the Applicant's claim for legal expenses.

Decision

15. The Tribunal being satisfied it had sufficient information before it to make a decision without a hearing and having carefully considered the documentary and oral submissions finds the Applicant entitled to an order for payment by the Respondent in the sum of £7517.33.

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.



**Graham Harding
Legal Member/Chair**

Date 23 March 2021