



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in relation to an application under section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/18/1120

Re: Property at 6 Bacchante Way, Kingseat, Aberdeen, AB21 0AX (“the Property”)

Parties:

Mr Nathaniel Leadbitter, 19 Braecroft Drive, Westhill, Aberdeen, AB32 6FF (“the Applicant”)

Mr Thomas Boyle, 6 Bacchante Way, Kingseat, Aberdeen, AB21 0AX (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment against the Respondent in favour of the Applicant in the sum of £2,400.

Background

- 1 The Applicant submitted an application to the Tribunal for recovery of payment of rent arrears from the Respondent in respect of the Property.
- 2 The Tribunal subsequently received further written representations from the Applicant advising that the arrears were continuing to accrue and seeking to amend the application to reflect the outstanding sum of £2,400 as at July 2018.

Case Management Discussion

- 3 A Case Management Discussion took place on the 2nd August 2018 at the Credo Centre, Aberdeen. Mr Doran from Raeburn Christie Clark and Wallace

("the Applicant's Representative") appeared on behalf of the Applicant. The Respondent was present.

Submissions from the Applicant

- 4 The Applicant's Representative advised that the rent payable was £600 per month. He sought to amend the application to reflect the outstanding sum of £2,400 being rent unpaid for the months of April, May, June and July 2018. He submitted that the Respondent had made payment of the rent for August in the sum of £600 and had emailed his firm on 31 July 2018 advising that he was withholding the aforementioned rent due pending an expected award of payment in the sum of £2,400. This was in relation to a pending application before the Tribunal as a result of the Applicant's failure to lodge the deposit with an approved tenancy deposit scheme and the sum amounted to the expected award together with the deposit payment.
- 5 The Applicant's Representative submitted that the Respondent had no legal right to withhold rent in anticipation of an award of payment which was not guaranteed. There was no certainty that the Respondent would be successful in his application. The application before the Tribunal was a separate matter and should bear no relation to the action taken by the Respondent under the Tenancy Deposit Scheme (Scotland) Regulations 2011 ("the 2011 Regulations"). The Applicant moved that the order be granted.

Submissions from the Respondent

- 6 The Respondent confirmed that he was withholding rent pending the outcome of his application to the Tribunal under the 2011 Regulations. He was confident having discussed the matter with both Shelter and the Tribunal's office that the full amount of three times the deposit would be awarded which would offset the rent due. He was also seeking to safeguard his position by withholding the additional sum of £600 as payment for his deposit. He had no confidence that the Applicant would consent to the return of his deposit and he had concerns that in the absence of any inventory the Applicant would seek to blame him for damage that had been evident at the start of the tenancy. The Respondent advised that he had hoped his application under the 2011 Regulations would have been dealt with by the date of the Case Management Discussion however there had been difficulties in serving the papers on the Applicant. The Respondent further advised that he would require to make payment of rent and a deposit in respect of his new tenancy.
- 7 The Respondent advised that he could have sought to postpone the Case Management Discussion but had chosen not to do so. He asked for the Applicant and the Tribunal to show him the same courtesy and kindness.
- 8 The Respondent conceded that he was not currently holding the withheld rent in an account. He submitted that he would require time to pay but would have to await the award of payment he expected in terms of the tenancy deposit.

Findings in Fact

- 9 The parties entered into a Tenancy Agreement in respect of the property at 6 Bacchante Way, Kingseat, Aberdeen which commenced on 1st December 2017.
- 10 The tenancy is a private residential tenancy as defined by section 1 of the Private Housing (Tenancies) (Scotland) Act 2016.
- 11 In terms of Clause 7 of the said Tenancy Agreement the Respondent undertook to make payment of the rent at the rate of £600 per month.
- 12 The Respondent has failed to make payment of rent lawfully due in the sum of £2,400.

Reasons for Decision

- 13 Having considered the verbal and written representations from the Applicant, the Applicant's Representative and the Respondent the Tribunal was satisfied that it was able to make sufficient findings to determine the case without a hearing and that to do so would not be prejudicial to the interests of the parties.
- 14 The Tribunal found that the Respondent's reasons for withholding rent had no legal basis. The Respondent's right to obtain a payment as sanction against the Applicant under the 2011 Regulations was a separate statutory process and one that did not impact on the obligation to make payment of rent under the terms of the Tenancy Agreement. In any event the payment expected through the separate application under the 2011 Regulations was discretionary and was not guaranteed. The Respondent had admitted that the sum of £2,400 was outstanding and that the amount equated to four months unpaid rent. The Tribunal therefore concluded that there was no valid defence to the claim.
- 15 Accordingly the Tribunal was satisfied that rent unpaid in the sum of £2,400 was lawfully due. The Respondent had been given fair notice of the Applicant's intention to amend the sum sought and had agreed at the Case Management Discussion that the amount of £2,400 was outstanding. The Tribunal therefore determined to make an order for payment in the amended sum of £2,400.

Decision

- 16 The Tribunal determined to make an order for payment against the Respondent in favour of the Applicant in the sum of £2,400.

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

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Legal Member/Chair

2/8/18

Date