

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/18/2959

Re: Property at 30 Orchard Court, Dundee, DD4 9DB ("the Property")

Parties:

Mr Russell Bowen, Mrs Natalie Bowen, C/o Easy Lets, South Tay Street, Dundee, DD1 1NU; C/o EasyLets, 7 South Tay Street, Dundee, DD1 1NU ("the Applicants")

Mr Liam Henderson, 30 Orchard Court, Dundee, DD4 9DB ("the Respondent")

Tribunal Members:

Petra Hennig-McFatrige (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Applicants were entitled to an order for payment of £1,950 against the Respondent for rent arrears accrued from 1.8.18 to 31.10.18.

Background:

The application was made on 1 November 2018. The application asked for a payment order to be made for the sum of £1,950 for unpaid rent.

Attached to the application were the Private Rented Tenancy Agreement, Notice to Leave copy, Certificate of Service by Sheriff Officers, Copy S 11 Notice, statement of arrears up to and including 1.10.2018 for the property showing arrears as at that date of £1,950.

A Case Management Discussion (CMD) was scheduled for 21 January 2019 and both parties advised of the date, time and venue.

Sheriff Officers served on the Respondent the application and notification of the CMD on 3 January 2019 together with the information that any representations

should be lodged by 17 January 2019 and that the Tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application.

No representations were received from the Respondent. The Respondent had not contacted the Tribunal prior to the CMD and did not attend.

The Tribunal was satisfied that he had received ample notice of the application and the CMD.

The Case Management Discussion

Mr Dymock from EasyLets attended the hearing on behalf of the Applicants. He advised that as of the date of the CMD the arrears had increased to £2,192.23 and that the Respondent had made an offer to pay at £50 per months. He wished to change the amount sought in the order to the up to date amount outstanding. However, the Tribunal considered that the updated rent schedule up to 7 January 2019 with the updated figure could have been lodged prior to 17 January 2019 and that there had been no good reason not to amend the sum prior to the CMD. The Tribunal advised that either the Applicants could ask for a further CMD to update the sum and lodge the relevant documents as the updated amount had not been formally intimated to the Respondent or the matter could be dealt with at the CMD on the basis of the initial amount. Mr Dymock asked for the Tribunal to make a decision on the day.

He referred the Tribunal to the documents lodged with the application, which are referred to for their terms and held to be incorporated herein.

Findings in Fact:

- 1. The parties entered into a Private Residential Tenancy for the property with a start date of 11 May 2018 (clause 6) and a monthly rent of £650 payable in advance.**
- 2. From 1.8.2018 to 1.10.2018 no payments were received and the Respondent was in arrears of rent for the amount of £1,950 for non payment of rent on 1.8.18, 1.9.18 and 1.10.18 as per the schedule of arrears lodged.**
- 3. The Respondent has not made any payments towards the arrears since.**

Reasons for Decision

The Tribunal considered that the facts of the case were not disputed. No representations were made by the Respondent and the Respondent did not attend the CMD. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or
- (c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;
- (b) identifying what facts are agreed between the parties;
- (c) raising with parties any issues it requires to be addressed;
- (d) discussing what witnesses, documents and other evidence will be required;
- (e) discussing whether or not a hearing is required; and
- (f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Power to determine the proceedings without a hearing

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,
a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

The Respondent did not dispute that rent for the months of August, September and October 2019 remained outstanding as of the date of the CMD. There was no opposition to the application. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case. The Respondent had opted not to participate in the process. There was no valid defence to the application.

Decision

The Tribunal grants an order for payment of the sum of £1,950.

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.

P Hennig-McFatrige

Legal Member/Chair

21 January 2019

Date