



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 70(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/20/0114

Re: Property at Flat 1 Village Apartments, Oldmeldrum Road, Newmachar, Aberdeen, AB21 0FL (“the Property”)

Parties:

Mr Keith Brazier, Tigh Na Coine, Lairshill, Newmachar, Aberdeen, AB21 0PX (“the Applicant”)

Mr Neil Erskine, Flat 1 Village Apartments, Oldmeldrum Road, Newmachar, Aberdeen, AB21 0FL (“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 the sum of One thousand eight hundred and seventy seven pounds (£1,877)

Background

- 1 By application dated 10 January 2020 the Applicant sought an order for payment of rent arrears against the Respondent. In support of the application the Applicant provided a copy Tenancy Agreement between the parties, Bank Statements and Copy email correspondence between the parties regarding the unpaid sums.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 18th March 2020.

- 3 Service of the application paperwork together with notification of the date, time and location of the Case Management Discussion was effected by Sheriff Officers.
- 4 Following service of the application paperwork, the Respondent submitted a time to pay application to the Tribunal offering payment at the rate of £200 per month. The Applicant subsequently intimated to the Tribunal that he would be unwilling to accept the time to pay offer on the basis that promises of payment had been made in the past and not honoured, and that a payment offer of less than 17.5% of the Respondent's income was unacceptable.

The Case Management Discussion

- 5 The Case Management Discussion took place on 18th March 2020. The Applicant was present. The Respondent was present.
- 6 The Legal Member explained the purpose of the Case Management Discussion. As preliminary matter, the Applicant explained that the tenancy had now terminated as at 14 March 2020 and there had been significant damage to the property. He would be looking to pursue costs. The Legal Member advised that this would require an amendment to the application which would have to be done through the amendment procedure and the case adjourned. The Applicant confirmed that he was content to proceed on the basis of the rent arrears only which amounted to £1877. The Respondent confirmed his agreement with the arrears figure.
- 7 The Legal Member asked parties regarding the time to pay application. The Applicant advised he was disputing this as he considered the Respondent had made similar promises in the past and had a significant amount of expendable income going by the information on the form. The Respondent advised that circumstances had changed since he submitted the form, and he was expecting to earn around £1000 per month from his self employment and £500 per month from benefits. The Legal Member noted this was a lower income to that stated in the time to pay application.

Findings in Fact and Law

- 8 The parties entered into a Short Assured Tenancy Agreement in respect of the property which commenced on 27th May 2019.
- 9 In terms of Clause 7 of the said Tenancy Agreement the Respondent undertook to pay rent of £575 per month.

- 10 The Respondent is liable to pay the Applicant the sum of £1877 as unpaid rent in terms of the Tenancy Agreement between the parties.
- 11 Despite repeated requests the Respondent has refused or delayed to make payment of the sums due.

Reasons for Decision

- 12 The Tribunal was satisfied on the basis of the information before it that it was able to make a determination of the application at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties. The Tribunal noted that the Respondent was not disputing that the debt was owed.

Having considered the terms of the tenancy agreement and rent statement produced by the Applicant, and based on its findings in fact, the Tribunal was satisfied that the Respondent was liable to pay the sum of £1877 in respect of outstanding rent arrears. The Tribunal accepted that the Respondent had a contractual obligation to make payment of rent at the rate of £575 per month to the Applicant and had failed to do so. The Respondent had not sought to dispute the terms of the application and there was no evidence before the Tribunal to contradict the position put forward by the Applicant.

Given the Respondent's change in circumstances, the Tribunal was not minded to grant the time to pay application. The Tribunal had concerns that any time to pay order granted would not be an accurate reflection of the Respondent's current position. Instead parties are encouraged to reach an informal arrangement regarding repayment of the debt to avoid the requirement for formal enforcement action.

The Tribunal therefore made an order for payment against the Respondent in the sum of £1877.

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 permis them.

Mrs Ruth O'Hare

Legal Member/Chair

18/03/2020

Date