



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/20/0903

Re: Property at 8/5 Saunders Street, Edinburgh, EH3 6TU (“the Property”)

Parties:

Mr Samir Aouane, Mrs Sarah Aouane, 34 Orchard Brae Avenue, Edinburgh, EH4 8HN (“the Applicants”)

Mr Jose Carlos Ocana Diaz, Address Unknown (“the Respondent”)

Tribunal Members:

Nairn Young (Legal Member)

Decision (in absence of the Respondent)

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

- Background

This is an application for an order for payment of sums alleged to be due to the Applicants from the Respondent in terms of his private residential tenancy at the Property. It called for a case management discussion (‘CMD’) at 10am on 16 December 2020 by teleconference. The Applicants were represented on the call by Mr Hann of Hann & Co., Solicitors. The Respondent did not call in and was not represented. The commencement of the CMD was delayed by 10 mins to allow for any technical issues the Respondent may have been experiencing, but there was still no contact from him.

As a preliminary matter, the Applicants had requested to be allowed to amend the sum sought in the application in regard to rent arrears to £4,012.90 and to add a further claim for £503.98 in regard to damages. This application to amend was served on the Respondent by advertisement on 20 November 2020. In respect of the new issue raised regarding damages, the Respondent was given until the date of the CMD to make written representations or request the opportunity to make oral representations. No such representation or request was received.

The Tribunal granted the application to amend.

- Findings in Fact
 1. The Applicants let the Property to the Respondent in terms of a private residential tenancy with a start date of 16 March 2019.
 2. The tenancy came to an end in May 2020.
 3. In terms of the tenancy agreement, rent of £995 per month was to be paid by the Respondent on the first day of each month.
 4. The Respondent paid no rent from 1 December 2019 until the end of the tenancy.
 5. Consequently, the Respondent owes the Applicants £4,012.90 in unpaid rent.
 6. The Respondent left the Property requiring repairs to the value of £1,498.98.
 7. The Applicants have had a deposit paid by the Respondent to the value of £995 returned to them against those repairs.

- Reasons for Decision

8. The Applicants are entitled to damages in compensation for the sums they have expended returning the Property to a reasonable condition following the Respondent's occupation of it. Taking into account the deposit that they have had returned to them, these total £503.98.
9. The Respondent therefore owes the Applicants a total (including rent arrears and damages) of £4,516.88. An order for payment of that amount should be made.
10. The Applicants also requested that an order for expenses should be made on the basis of the Respondent's unreasonable behaviour during the course of the tenancy and his failure to appear at the CMD or respond to the application. The Tribunal refused this request, on the basis that the Respondent had not displayed unreasonable behaviour in the conduct of the case itself, as is required by rule 40 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 to ground an award of expenses. Failure to respond or appear at a first calling of a case does not constitute unreasonable behaviour.

- Decision

Order made for payment by the Respondent to the Applicants of the sum of £4,516.88 (FOUR THOUSAND FIVE HUNDRED AND SIXTEEN POUNDS AND EIGHTY-EIGHT PENCE STERLING).

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.

Nairn Young

Legal Member/Chair

**16 December 2020
Date**