



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) 2016 Act

Chamber Ref: FTS/HPC/CV/20/1512

Re: Property at GR 24, Forest Park Road, Dundee, DD1 5NX (“the Property”)

Parties:

Lisdon Limited, Lisdon Low Road, Wesrmuir, Kirriemuir, DD8 5LN; Lisdon Low Road, Westmuir, Kirriemuir, DD8 5LN (“the Applicant”)

Mr Robert Donnelly, Mrs Amanda Donnelly, GR 24, Forest Park Road, Dundee, DD1 5NX (“the Respondents”)

Tribunal Members:

Joel Conn (Legal Member)

Decision (in absence of the Respondents)

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

Background

1. This is an application by the Applicant for civil proceedings in relation to a private residential tenancy in terms of rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”), namely an order for payment of rent arrears. The tenancy in question is a Private Residential Tenancy Agreement of the Property by the Applicant to the Respondents dated 1 February 2019 and with start date on that same date.
2. The application was dated 10 July 2019 and lodged with the Tribunal shortly thereafter. The order sought in the application was for £2,040 of rent arrears being arrears for the four rental payments due on from 1 April to 1 July 2020, being £510 each. The lease for the said tenancy also accompanied the application and bore a rental payment of £510 per month, payable on the 1st of each month.

The Hearing

3. On 2 September 2020, at a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber at 14:00, conducted by the remote telephone conference call, there was an appearance by Malcolm Daw and Susan Daw for the Applicant.
4. There was no appearance by either of the Respondents (that is, no call was placed into the telephone conferencing facility by the conclusion of the call around 14:25). The Applicants stated that no contact had been received from the Respondents recently. They described a history of correspondence where the Respondents, in particular the Second Respondent, made various promises for payment and give reasons for the delayed and missed payments, but none of the promises of payment were seen through. This concluded with an email of 1 July 2020 when the Second Respondent promised that she was about to encash a cheque that was sufficient to pay in full and the Applicants asked for evidence of this. No evidence, or payment, was forthcoming. The Respondents remained at the Property and had not paid rent due on 1 August or 1 September 2020.
5. The clerk confirmed that no contact had been received by the Tribunal from the Respondent. In the circumstances, having waited until 14:10 to commence the CMD and, with no attempted contact from either of the Respondents, I was satisfied to proceed in the absence of the Respondents.
6. The Applicants were concerned about the further unpaid sums of 1 August and 1 September 2020 but opted not to seek any amendment of the sum sought (as that would have occasioned an amendment being intimated on the Respondents and a continuation of the CMD). They sought conclusion of the application at this CMD on the basis of a claim for £2,040 for the four months specified.
7. The application did not seek any order in respect of expenses or interest at any contractual rate.

Findings in Fact

8. On 1 February 2019, the Applicant let the Property to the Respondents by a Private Residential Tenancy with a start date of 1 February 2019 (“the Tenancy”).
9. Under the Tenancy, the Respondents were to make payment of £510 per month in rent to the Applicant on the 1st of each month.
10. As of 10 July 2020 there was unpaid rent of £2,040 due by the Respondents to the Applicant in terms of the Tenancy, being the rent arrears accrued in the four rental payments due from 1 April to 1 July 2020.

11. On 10 July 2020, the Applicant raised proceedings for an order for payment of the rent arrears of £2,040 for the period to 10 July 2020.
12. On 10 August 2020, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondents, providing the Respondents with sufficient notice of the CMD of 2 September 2020 and the details for dialling into the conference call.
13. The Respondents provided no evidence of payment of any part of the said unpaid rent of £2,040 for the period to 10 July 2020 nor any dispute that the said unpaid rent was due in full.

Reasons for Decision

14. The application was in terms of rule 111, being an order for civil proceedings in relation to a private residential tenancy. I was satisfied, on the basis of the application and supporting papers, that rent arrears of £2,040 were outstanding as at the date of the CMD for the period to 10 July 2020.
15. I was satisfied that the necessary level of evidence for such civil proceedings had been provided. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal and I was satisfied to make a decision at the CMD to award the sum sought of £2,040 against the Respondents jointly and severally along with judicial interest of 8% per annum on that sum from the date of this Decision onwards until payment.
16. I noted that the application was limited to the rent arrears due under the lease to 1 July 2020 and this Decision does not preclude any future application by the Applicant in regard to any further claim under the lease against the Respondents regarding any other potential breach of the lease or arrears for any later period.

Decision

17. In all the circumstances, I was satisfied to make the decision to grant an order against the Respondents jointly and severally for payment of the sum of £2,040 to the Applicant with interest at 8% per annum from today's date until payment.

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.

Joel Cónn

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2 September 2020

Legal Member/Chair

Date