



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/20/1615

Re: Property at 19 Argyll Path, Denny, Stirlingshire, FK6 5EN (“the Property”)

Parties:

Mrs Marion Patterson Stewart, c/o Your Move, 31a Northbridge Street Bathgate, Bathgate, West Lothian, EH42 4PJ (“the Applicant”)

Miss Claire Margaret Bouch, Miss Kelsey Marie Bouch, 19 Argyll Path, Denny, Stirlingshire, FK6 5EN (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member)

Decision

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 November 2019 and with start date on that same date (“the Tenancy”).
2. The application was dated 29 July 2019 and lodged with the Tribunal on that date. The order sought in the application was for £4,550 of rent arrears to 29 July 2020 but that was subject to an amendment just before the CMD was assigned, and then a further amendment set out below. The lease for the said tenancy also accompanied the application and bore a rental payment of £650 per month, payable on the 1st of each month.

The Hearing

3. On 22 October 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 Kirstie Donnelly, solicitor, of BKF and Claire Bouch, the first named Respondent. Ms Bouch confirmed that she was appearing for both the Respondents.
4. Prior to the CMD, on 7 October 2020, the Applicant had intimated an amendment upon the Respondents seeking to amend the sum sought to £6,170.33 being the arrears of rent pro-rated to 15 October 2020. That date was said to be the date on which the Respondents were vacating the Property. The figure was made up of unpaid rent from 1 January 2020 (9 months at £650/month) plus pro-rated rent of £320.33 for 1 to 15 October 2020.
5. Further, prior to the CMD, on 9 October 2020, the first named Respondent lodged a Time to Pay application offering £200/m. This was accepted by the Applicant provided that the amendment was granted.
6. I sought clarification from the parties on some of the implications of their respective positions. The first named Respondent confirmed that she and her family were now in a new home but they had not yet completed clearance of the Property and return of the keys. Their intention to do so by 15 October, subsequently revised to 21 October 2020, had been further set back due to matters related to the current public health situation. They now expected to have handed back possession by 1 November 2020 at the latest.
7. The Applicant’s agent confirmed that the Applicant wished to bring this application to a conclusion notwithstanding the possibility of the Applicant wishing to pursue further sums due under the Tenancy from 16 October 2020 later. The first named Respondent confirmed that the Respondents consented to the amendment and understood that further sums may yet be pursued in regard to the conclusion of the Tenancy.
8. In regard to the Time to Pay application, it was only lodged by the first named Respondent. She stated her view that the second named Respondent, who was her 19 year old daughter (who was a student), was never supposed to be liable under the Tenancy. (This position was rejected by the Applicant and the Tenancy agreement did bear the second named Respondent’s electronic signature.) For the purposes of concluding matters, the first named Respondent confirmed that she did not seek to pursue a defence on behalf of the second named Respondent. On my further enquiry, the first named Respondent sought to alter the Time to Pay application to be stated on the Respondent’s joint behalf. The Applicant was willing to agree to that alteration and thus seek an order, jointly and severally, against the Respondents for the amended sum all subject to a single Time to Pay order at £200/month.

9. The application did not seek any order in respect of expenses or interest at any contractual rate. The Applicant's agent confirmed that she sought interest at 8% from the date of any Decision and the first named Respondent noted interest would be added to the order at that rate.

Findings in Fact

10. On 1 November 2019, the Applicant let the Property to the Respondents by a Private Residential Tenancy with a start date of 1 November 2019 ("the Tenancy").
11. Under clause 8 of the Tenancy agreement, the Respondents were to make payment of £650 per month in rent to the Applicant on the 1st of each month.
12. As of 1 October 2020 there was unpaid rent of £5,850.00 due by the Respondents to the Applicant in terms of the Tenancy, being the rent arrears accrued in regard to the nine rental payments due from 1 January to 30 September 2020.
13. The Applicant calculated a pro-rated rent for the period 1 October to 15 October 2020 is £320.33, being a date by which the Respondents previously stated they intended to leave the Property.
14. On 29 July 2020, the Applicant raised proceedings for an order for payment of the rent arrears of £4,555 for the period to 29 July 2020.
15. On 7 October 2020, the Applicant amended the proceedings to seek an order for payment of the rent arrears of £6,170.33 for the period to 15 October 2020.
16. On 25 September 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 22 October 2020 and the details for dialling into the conference call.
17. The Respondents did not dispute that there was unpaid rent of £5,850 for the period 1 January to 30 September 2020.
18. The Respondents did not dispute that pro-rated rent for the period 1 to 15 October 2020 was £320.33 and was unpaid.

Reasons for Decision

19. 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 £5,850 were outstanding as at the date of the CMD for the period to 30 September 2020. I was further satisfied, given the agreement between the parties, that there was efficacy in granting the amendment to add a pro-rated figure, agreed by the Respondent, of £320.33 for rent to 15 October 2020 and conclude this application at that

point. (I struggle to reach the same pro-rated figure but all my calculations are close to the figure agreed and I am happy to give effect to the agreed position.)

20. 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 £6,170.33 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, all subject to a Time to Pay order of £200/month in regard to the joint liability.
21. To restate, it was the agreed position between the parties that the application was limited to the rent due under the lease to 15 October 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

22. 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 £6,170.33 to the Applicant with interest at 8% per annum from today's date until payment, subject to a Time to Pay order of £200/month.

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.

22 October 2020

Legal Member/Chair

Date