



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/23/0996

Re: Property at 18 F Wedderburn Street, Dundee, DD3 8BY (“the Property”)

Parties:

Jam Koramshai, 23 Langdale Road, West Sussex, BN3 4HQ (“the Applicant”)

Mr Alan Stephen, 18F Wedderburn Street, Dundee, DD3 8BY (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision

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

Introduction

These are linked applications between the same parties. The first application seeks an eviction order and is under Rule 109 and Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The second application seeks a payment order relating to arrears of rent and is under Rule 111 and Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016.

Intimation of the applications and of the initial Case Management Discussions (CMDs) in both applications were effected upon the respondent by Sheriff Officers on 26 July 2023.

The CMDs took place by teleconference at 10.00 am on 23 August 2023. The applicant was represented by Ms Hazel Young of Rockford Properties. The respondent joined the teleconference hearing personally and Mr Kenneth Marshall of Dundee Law Centre represented his interests.

Findings and reasons

The property is 18F Wedderburn Street, Dundee DD3 8BY. The applicant is Jam Koramshai who is the heritable proprietor and registered landlord. The respondent is Mr Alan Stephen who is the tenant. The parties entered into a private residential tenancy which commenced on 20 February 2019.

Throughout the duration of the tenancy, the respondent has failed to make full payment of the contractual rental payments. The eviction is based upon arrears of rent and the ground relied upon is ground 12, contained within Part 1, Schedule 3 to the 2016 Act. The only issue in dispute was whether the making of an eviction order would be reasonable.

The applications when made were supported by a detailed rent statement disclosing sum of £1,743.78 was outstanding. That outstanding balance was as at March 2023.

The respondent was declared bankrupt on 30 May 2023. Accordingly outstanding rent prior to this date cannot be recovered from him personally though can be taken into account in the overall reasonableness consideration.

The tribunal was provided with an up to date rent statement. The applicant's own representative accepted that this was not an accurate reflection of what is outstanding. Furthermore the statement is unreliable as it conflates sums due both pre and post the respondent's bankruptcy. The tribunal did not find the rent statement credible and reliable and therefore attached limited weight to it.

For the purposes of the eviction it was agreed by both parties representatives that there was broadly £220 of rent outstanding. This equates to less than one half of one months' rent charge. The respondent undertakes to repay the sum outstanding over the next 7 months. The rent charges are paid by a combination of the housing element of universal credit and a deduction from his primary universal credit payment for the rent arrears. His son lives with him and he is in employment. Additional funds will be paid each month.

The tribunal found that it would not be reasonable to evict on the basis of the current rent arrears.

The tribunal also found that it would not be reasonable or in the interests of justice to make any payment order against the respondent. As set out above, the rent statement was not found to be credible and reliable. It was not possible to decipher what sums are actually outstanding. In any event given the respondent's undertaking to repay the small arrears balance on a voluntary basis he is not refusing to pay or unreasonably delaying to make payment of outstanding sums. He can only be liable for arrears which postdate his bankruptcy which was less than three months ago.

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.

R Mill

23 August 2023

Legal Member/Chair

Date