



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 30 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/22/3871

Re: Property at 10 Campsie Avenue, Irvine, North Ayrshire, KA11 1JF (“the Property”)

Parties:

Easton Property Limited, 2 Newfield Drive, Dundonald, South Ayrshire, KA2 9EW (“the Applicant”)

Miss Claire Manson, Mr James Laverty, 10 Campsie Avenue, Irvine, North Ayrshire, KA11 1JF (“the Respondents”)

Tribunal Members:

Nicola Irvine (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) recalled the decision of 16 February 2023 and granted an Order for Payment against the Respondents in favour of the Applicant in the sum of £3,003.59.

Background

1. The Applicant submitted an application under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The Applicant sought an order for payment in respect of rent arrears said to have been incurred by the Respondents.
2. A case management discussion (“CMD”) took place on 16 February 2023. The Tribunal issued a written decision with statement of reasons to parties following that CMD.
3. On 27 February 2023, the Tribunal received an application on behalf of the Second Respondent to recall the decision of 16 February 2023.

4. The Tribunal assigned a CMD for 13 June 2023 in order from parties before determining the application to recall the decision.
5. On 5 June 2023, the Tribunal received written representations from the Second Respondent's representative.

The case management discussion ("CMD")

6. The Applicant was represented by Miss Aynsley Barclay and the Respondents by Mr Alister Meek. The CMD took place by conference call. The Applicant's representative explained that, notwithstanding the Second Respondent's departure from the property, the joint tenancy was not terminated and no new tenancy agreement commenced. The Applicant's position was that both Respondents were jointly and severally liable for payment of rent. The Applicant's representative did not have sufficient information to suggest that the second rent increase notice was served on the Second Respondent. Accordingly, the Applicant's position was that if the Tribunal considered the second rent increase notice to be invalid, then the sum sought from both Respondents was reduced to £3,003.59.
7. The Tribunal observed that the Second Respondent cannot terminate the tenancy alone. The tenancy agreement sets that out at clause 23 of the tenancy agreement which provides that one joint tenant cannot terminate the joint tenancy on behalf of all joint tenants. The Respondents' position was that the First Respondent agreed that the joint tenancy should be terminated. However, the First Respondent could not produce any evidence to demonstrate that notice was served on the Applicant as required. The Respondents' representative accepted that, in these circumstances, both Respondents remained jointly and severally liable to pay the rent. It was the Respondents' position however that the sum sought should be amended, given that there is no evidence that the second rent increase notice was served on the Second Respondent.

Findings in Fact

8. The parties entered into a private residential tenancy which commenced 1 April 2019.
9. Rent was initially payable by the Respondents at the rate of £510 per month, in advance.
10. Rent increased on 1 March 2021 to £520 per month.
11. The Respondents incurred rent arrears totalling £3,003.59 as at 1 October 2022.

Reason for Decision

12. The Applicant's representative was not able to produce any evidence to demonstrate that the second rent increase notice was served on the Second Respondent. There was an acceptance therefore that the sum ordered should be reduced. In light of that, the Tribunal was satisfied that it was in the interests of justice to recall the decision of 16 February 2023.
13. There was no evidence to demonstrate that the joint tenancy was terminated. In these circumstances, both Respondents remained jointly and severally liable for payment of rent in terms of the tenancy agreement.
14. The Tribunal was satisfied that both Respondents incurred rent arrears of £3,003.59 as at 1 October 2022.

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.

N Irvine

Legal Member/Chair

13 June 2023

Date