



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/22/0541

Re: Property at 8 Ivy Grove, Coatbridge, ML5 3PS (“the Property”)

Parties:

Ecosse Estates LTD, Office 2 Room 8, Kirk house, Broom Road East Newton Mearns, Glasgow, G77 5LL (“the Applicant”)

Miss Karen Ward, 8 Craigflower Road, Glasgow, G53 7QB (“the Respondent”)

Tribunal Members:

Andrew Upton (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Application should be refused.

STATEMENT OF REASONS

1. This Application called for a Hearing by teleconference call on 10 August 2022. The Applicant was represented by a combination of Miss Lowe and Mr Caplan. The Respondent was personally present.
2. This is an Application for payment of what are said to be rent arrears. Much of the position is agreed between the parties. It is agreed that the Respondent previously fell into rent arrears of £8,000. It was agreed the Applicant raised two previous applications against the Respondent: one for payment of arrears, and the other for eviction. It was agreed that orders were granted by the Tribunal in July 2021 consequent upon an agreement having been reached between them, which included that:-
 - a. The Respondent would remove from the Property voluntarily by the end of November 2021;

- b. The Respondent's rent arrears would be reduced to £4,000, to be deducted from her earning;
 - c. The Respondent would be liable to pay rent for the period August to November 2021 at a rate of £500 per calendar month, being the total sum of £2,000.
3. This Application relates to the £2,000 payment for the period August 2021. The Respondent removed from the Property as agreed, and payment of the £4,000 is being made by way of an earnings arrestment.
4. The dispute relates to the agreement reached between the parties. The Applicant states in the Application that the Respondent was liable to pay rent for the period August to November 2021 as it fell due, and that payment of the £4,000 arrears was to commence from December 2021. The Respondent's position is that she reached the agreement with Brian Caplan, director of the Applicant, that the £2,000 due for the period August to November 2021 would be tacked on to the £4,000 arrears and collected in the same way after the £4,000 arrears had been cleared. On that basis, the current action was premature.

Evidence

Brian Howard Caplan

5. Mr Caplan was the only witness for the Applicant. He is a director of the Applicant. He confirmed that he met with the Respondent in or around June or July 2021 to discuss settlement of the two Tribunal applications. He confirmed that he expressly told the Respondent that the £2,000 due for August to November 2021 would be tacked on to the £4,000 arrears and collected in the same way once the £4,000 arrears had been cleared.
6. Mr Caplan was subsequently directed to an email from the Applicant's former solicitors, TC Young, following the hearings in the previous applications which tended to suggest that the agreement between the parties reflected what the Applicant had stated in the Application, which was that rent was to be paid as it fell due in each of the months of August, September, October and November 2021, and the £4,000 arrears paid thereafter in accordance with the agreement reached. Mr Caplan confirmed that he would have given the instruction to TC Young, but could not explain why the terms suggested by TC Young differed to those which he had just described. When asked to state which agreement had in fact been reached, Mr Caplan conceded that he had in fact agreed that the £2,000 due for the period August to November 2021 would not be collected until after the £4,000 arrears had been cleared.

Karen Ward

7. Unsurprisingly, given Mr Caplan's evidence, Miss Ward's evidence was short and to the point. She confirmed that she had agreed with Mr Caplan that the £2,000 rent due for the period August to November 2021 would not be

collected until after the £4,000 arrears had been cleared. The sum would be tacked to the £4,000 arrears and collected in the same way as the £4,000 arrears after the £4,000 arrears had been cleared.

Submissions

8. The Applicant invited the Tribunal to make the order for payment on the basis that the £2,000 arrears had fallen due, notwithstanding that they were not to be collected until a later date. The Applicant conceded (correctly, in the Tribunal's view) that if the Tribunal accepted the evidence that the parties had agreed that the £2,000 arrears would be tacked on to the end of the £4,000 arrears then the Application must fail on the basis that the express agreement of the parties was that the £2,000 arrears would be paid after the £4,000 arrears had been cleared.
9. The Respondent's submissions matched her evidence. She said that the Application was premature, and that the £2,000 arrears were not yet due under the agreement reached between the parties.

Decision

10. It is entirely unclear to the Tribunal how the Applicant allowed this Application to proceed to a Hearing. The evidence for both parties was completely consistent on the agreement reached. Both the Respondent and Mr Caplan were clear and unequivocal: the agreement was that the £2,000 arrears would be tacked on to the end of the £4,000 arrears and collected in the same way as the £4,000 arrears **after** the £4,000 arrears had been cleared.
11. In light of that uncontested evidence, the Tribunal can only refuse the Application as premature. Unless and until either (i) the £4,000 arrears have been cleared, or (ii) the Respondent breaches the repayment agreement, there is no basis to assert that the £2,000 arrears are due for payment. They are not. They will fall due for payment on the earlier occurrence of one of the aforementioned events.
12. It follows that the Application is refused.

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.

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Legal Member/Chair

Date 10/08/22_____