



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/21/1154

Re: Property at 37 Beattock Wynd, Hamilton, ML3 9JS (“the Property”)

Parties:

Mr Christopher Hogg, Val Das Pedras, Lote 1 Caixa Postal 2198Y, Pedras Lagos 8600 319, Lagos, Portugal (“the Applicant”)

Miss Stacy Mccrory, Miss Pauline Murray, 42 Orchard Street, Hamilton, ML3 6PB (“the Respondents”)

Tribunal Members:

Valerie Bremner (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order in the sum of Ten Thousand One Hundred and Forty Six Pounds and Seventy Nine Pence Only (£10146.79) be made against the Respondents and in favour of the Applicant.

Background

1. This application is for a payment order in terms of Rule 111 of the Tribunal rules of procedure. The application was lodged with the Tribunal on 12 May 2021 and accepted by the Tribunal on 24 May 2021. A case management discussion was fixed for 6 July 2021 at 2 pm.

Case Management Discussion

2. At the case management discussion on 6 July 2021 the Applicant was represented by Miss Laurie of First Stop Properties Ltd/Let’s Let. There was no appearance by or on behalf of the Respondents. Miss Laurie requested that the Tribunal proceed in the absence of the Respondents. The Tribunal had sight of an execution of service of the Application and supporting papers on both Respondents by Sheriff Officer at their

current address. The Tribunal was satisfied it was appropriate to proceed in the absence of the Respondents given that they had received reasonable notice of the application and case management discussion.

3. At the case management discussion the Tribunal had sight of an application, a tenancy agreement, a rent statement, a series of emails between the letting agent and Respondents, arrears letters and rent schedules in respect of the property.

4. Miss Laurie requested a payment order in the sum of £10,146.79. She explained that the original tenancy agreement between the parties had commenced on 22nd August 2017 for a period of 6 months with monthly rent payable of £485. This agreement appeared to have continued on a rolling basis after it first ended. Notices had been served ending that tenancy with effect from 29th April 2020. The Tribunal did not have sight of these notices. Despite the original tenancy having been brought to an end, the Respondents had been permitted to remain as tenants at the property after that date, still being required to pay the same rent of £ 485 per month.

5. Miss Laurie further explained that the firm of letting agents where she worked had taken over management of the rental from another agent in 2020 and inherited rent arrears already in place in respect of the tenancy. She explained that when her firm took over management of the rent payments from another agent, rent arrears had already accrued in the sum of £4564.39. The Tribunal had sight of a rent schedule from July 2018 to February 2020 showing one rent payment between July 2018 and February 2019 then 9 payments of varying amounts between March 2019 and February 2020. Since Miss Laurie's firm took over the rental in 2020 no payments towards arrears were made by the Respondents but four small payments had been made direct from DWP towards the rent. These had been made after Miss Laurie had written to the DWP requesting that any benefit payment be paid directly to the letting agent. Rent arrears as of 21st February 2021 were £ 10,146.79.

6. The Tribunal had sight of a number of emails between Miss Laurie and the Respondents going as far back as February 2020 together with letters setting out the total rent arrears at the property at that time and at later dates, seeking payment. As of February 2020 there were email discussions regarding setting up a direct debit and a payment plan to pay the rent arrears. An email sent by the Respondent Pauline Murray in October 2020 suggested that "universal credit" was to pay the rent arrears off directly to the landlord as he had applied for £7000 to be paid to him. The email suggested that instalments were to be paid direct to the landlord every month and even when the tenants vacated the property the email suggested that universal credit would be paid until the arrears were paid off. Miss Laurie had queried this directly with the Respondent Pauline Murray but there was no response on that issue. Miss Laurie was able to confirm that the landlord had received no intimation from the DWP that he would receive arrears directly nor had he received any payments directly, these having been dealt with by the letting agent.

7. Correspondence between the Respondents and Miss Laurie as recently as April 2021 contained an offer from the Respondent Pauline Murray indicating that they (the Respondents) could pay £30 per month towards the arrears from 12 May 2021 and would pay more when they were working. This email had been acknowledged and information given regarding bank details in order to make payment towards arrears whilst the landlord considered the offer of instalment payments. No monies were paid during that time and the landlord, the Applicant in the application, did not agree to the

proposal of instalment payments of £30 per month as this would have taken in excess of 28 years to repay the arrears. Miss Laurie advised the Tribunal that in all the circumstances the landlord had required to bring the application to try to recover the rent arrears as all attempts to do so had failed.

8. Miss Laurie advised the Tribunal that as far as she was aware none of the rent arrears had been accrued due to any delay or failure in payment of a relevant benefit to or on behalf of either Respondent. She also advised that the Respondents had vacated the property on 8 February 2021 without giving notice. The Applicant was seeking rent arrears payments up to 21 February 2021, 13 days beyond the date when the Respondents vacated the property without notice, and the day before the next monthly rent had fallen due. Miss Laurie advised that this was a shorter period than the 28 days' notice to end the agreement which the Respondents should have given.

9. The Tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

10. The Applicant entered into a short assured tenancy agreement with the Respondents at the property with effect from 22 August 2017. This agreement was for a six-month period and appears to have continued on a six monthly basis until early in 2020.

11. The monthly rent payable at the property was £485.

12. By the end of February 2020 rent arrears at the property stood at £5049.39.

13. New letting agents took over management of the rental early in 2020. Notices were served ending the short assured tenancy with effect from 29 April 2020.

14. Despite this the Applicants were permitted to stay on as tenants at the property and required to pay the same rent of £485 per month in terms of what became a private residential tenancy.

15. No rent payments were received from the Respondents by the letting agent dealing with the rental from the end of April 2020 until the end of the tenancy.

16. During that period the only payments towards the rent were received from the DWP in the form of four small payments received between November 2020 and February 2021.

17. The Respondents vacated the property without giving notice on 8 February 2021.

18. Rent arrears at the property up to 21 February 2021, the day before the next rent payment fell due are £10,146.79.

19. The sum of £10,146.79 is lawfully due by the Respondents to the Applicant in respect of rent arrears at the property.

Reasons for Decision

20. The Tribunal was satisfied that rent arrears as set out by the Applicant's representative had accrued at the property and were due by the Respondents to the Applicant. There had been a number of attempts since early in 2020 to engage with the Respondents and they had been allowed to remain in the property after the first tenancy agreement was terminated despite a high level of rent arrears accrued

before April 2020. No Private residential tenancy was produced to the Tribunal but after April 2020 and the termination of the first tenancy, the Private residential tenancy would have taken its place, whether in writing or not. Attempts had been made to engage the Respondents with a payment plan, instalment payments had been considered but these would not allow for payment of the arrears within a reasonable time. There was no suggestion that any payments towards rent after April 2020 came from the DWP other than four small payments shown in the rent statement. The suggestion by one of the Respondents by email that the landlord was to receive £7000 by way of arrears direct from DWP was confirmed by the Applicant's representative as incorrect. It was noticeable that in the e-mails seen by the Tribunal, those which came from at least one of the Respondents did not seek to suggest that the arrears were not due. The Tribunal considered that it was reasonable in all circumstances to make a payment order for the sum requested.

Decision

The Tribunal made a payment order in favour of the Applicant and against the Respondents in the sum of £10,146.79.

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.

V. B

Legal Member/Chair

6.7.21

Date
