



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/19/3699

Re: Property at 12 TL Dundonald Street, Dundee, DD3 7PW (“the Property”)

Parties:

Mr Richard Bailey, 6 Castle Gogar Rigg, Edinburgh, Midlothian, EH12 6FP (“the Applicant”)

Ms Deborah Young, 12 TL Dundonald Street -GONE AWAY SEE NOTES, Dundee, DD3 7PW (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent is in breach of the tenancy agreement with the Applicant and has failed to pay rent. The Tribunal accordingly has decided to make an order for payment in the sum of FIVE THOUSAND ONE HUNDRED POUNDS (£5100) STERLING with interest thereon at the rate of 3.5% per annum from the date of the order to payment. **The order for payment will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.**

Background

1. By application dated 15 November 2019 the Applicant’s solicitor applied to the First- tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for payment of rent arrears against the Respondent relating to a tenancy at the Property.

2. On 5 March 2020, the Tribunal accepted the application under Rule 9 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
3. A Case Management Discussion (“CMD”) had originally been assigned to proceed on 26 March 2020. Intimation of this had been made on the Respondent by Sheriff Officers on 25 February 2020. This CMD was discharged due to the COVID-19 pandemic. Whilst a further CMD was assigned to proceed on 10 July 2020, that was continued as the Tribunal had no proof the Respondent had received notification of this CMD in terms of Rule 24 of the Regulations. A new CMD was assigned to proceed on 24 August 2020.
4. On 30 July 2020, the Tribunal enclosed a copy of the application and invited the Respondent to make written representations. The Tribunal also advised parties on 30 July 2020 that a Case Management Discussion under Rule 17 of the Regulations would proceed on 24 August 2020. This paperwork was served on the Respondent by Michael Gallagher, Sheriff Officer, Livingston on 30 July 2020 and the certificate of execution of service was received by the Tribunal administration.
5. On 10 August 2020 the Applicant’s solicitor forwarded an up to date rent statement to the Tribunal showing that arrears had increased to £5100 and requesting that the sum sought be increased to £5100. The Tribunal sent this request to the Respondent with a copy of the rent statement on 12 August 2020. The Respondent did not make any written representations in response to either the application served on her by Sheriff Officers on 30 July or with regard to the Applicant’s request to increase the sum sought.

Case Management Discussion

6. The adjourned CMD proceeded by way of teleconference call. Mr Harris from Jackson Boyd, Solicitors appeared on behalf of the Applicant. There was no appearance by or on behalf of the Respondent despite the teleconference starting 10 minutes late to allow the Respondent plenty of time to join. The CMD also considered an eviction application under case reference FTS/HPC/19/3697 in terms of which the Applicant sought to evict the Respondent due to the arrears. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD for both applications in her absence.

7. The Tribunal had before it a Private Residential Tenancy Agreement between the Applicant and the Respondent signed and dated 6 September 2018 and various rent statements which the Applicant had lodged for each CMD that had previously been assigned.
8. At the point of lodging the application the Tribunal had noted the arrears were £2040 and that the rent statements lodged showed that no rent, which was £340 per month, had been paid since 1 May 2019. Mr Harris explained the arrears were currently £5100 with reference to the up to date rent statement lodged on 10 August 2020 which showed how the arrears had accrued. In the circumstances, Mr Harris also sought interest at the rate of 3.5 % per annum.
9. In terms of Rule 14A of Regulations the Tribunal noted that intimation of the increase of the sum sought should have been intimated on the Respondent by the Applicant. Mr Harris advised he had not done so but had received intimation from the Tribunal administration that they had “crossed over” this information to the Respondent.
10. After a short adjournment the Tribunal established the Applicant’s rent statement and the request to amend the sum sought had been sent to the Respondent on 12 August 2020. Mr Harris submitted that if the Tribunal was not minded to allow the sum sought to be increased he would seek a further continuation of the CMD. He reminded the Tribunal of the overriding objective in Rule 2 and submitted that the Tribunal deal with the matter flexibly and proportionately; if the case were continued again further arrears would no doubt occur and if the Respondent moved out or was evicted in the meantime, her whereabouts may not become known for three months or so to the prejudice of the Applicant.

Findings in Fact

11. The Applicant and the Respondent agreed by way of Private Residential Tenancy Agreement dated 6 September 2018 in relation to the Property that the Respondent would pay the Applicant a calendar monthly rent of £340.
12. The Respondent has fallen into arrears of rent. The last payment to account was on 1 May 2019 when £340 was paid. The Respondent has made no payments of rent since.
13. The arrears as at 15 November 2019, the date of application, were £2040. Current arrears are £5100.

Reasons for Decision

14. The Tribunal was prepared to allow the Applicant to increase the sum sought to £5100 as shown in the rent statement produced. The Tribunal noted the Respondent had not paid any of the monthly rent of £340 since May 2019, a period of over 15 months. The Respondent had received a copy of the rent statement and a copy of the Applicant's request to increase the sum sought. The amount of arrears, or at least the fact that arrears were increasing would be within the Respondent's knowledge. She had received intimation of the application by Sheriff Officers and of the CMD which had been due to proceed on 26 March 2020 and of the current CMD. The Applicant had produced evidence of persistent non- payment of rent over a substantial period of time with reference to the tenancy agreement and the rent statements lodged. The Tribunal was satisfied on the basis of these documents, together with Mr Harris's submissions and with regard to the overriding objective, that the amendment be allowed and the arrears figure be increased to £5100. With regard the overriding objective to deal with matters without unnecessary delay and proportionately having regard to all the circumstances the Tribunal considered it reasonable to do so. On balance the Respondent would be aware she had paid no rent for a substantial period of time and this had to be weighed against the Applicant's right under the tenancy to the rent without incurring no doubt further expense to him if the matter were continued further. Further the Tribunal was satisfied that the Applicant's request for interest at the rate of 3.5% was reasonable under Rule 41A of the Regulations.

15. The Tribunal granted an order for payment of £5100 with interest at 3.5% per annum.

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.

Shirley Evans

25 August 2020

Legal Member/Chair

Date