



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 70(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/20/1330

Re: Property at 42/9 Newhaven Place, Western Harbour, Edinburgh, EH6 4UJ (“the Property”)

Parties:

Sandpiper Road NHT 2014 LLP, c/o Rettie and Co, 4 Jamaica Street, Edinburgh, EH3 6HH (“the Applicant”)

Bannatyne Kirkwood France & Co, 16 Royal Exchange Square, Glasgow, G1 3AG (“the Applicant’s Representative”)

Mr Lesley McNair, 42/9 Newhaven Place, Western Harbour, Edinburgh, EH6 4UJ (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order in the sum of Seven thousand, three hundred and twenty eight pounds and seventy four pence (£7,328.74) Sterling together with interest at the rate of three per cent per annum from the date of this decision until payment.

Background

- 1 By application dated 16th June 2020 the Applicant sought an order for payment of rent arrears against the Respondent in the sum of £6,724.64. In support of the application the Applicant provided a copy Tenancy Agreement, Rent Statement and Letter confirming the termination of Mrs Kate McNair’s interest in the tenancy as at 19 July 2019.

- 2 By Notice of Acceptance of Application dated 30 June 2020 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 21st August 2020. Due to the imposition of restrictions in response to the Covid-19 pandemic the Case Management was scheduled to take place by tele-conference. A copy of the application paperwork together with the date and time of the Case Management Discussion and instructions on how to join the tele-conference was served upon the Respondent personally by Sheriff Officers on 4th August 2020.
- 3 By email dated 4 August 2020, the Applicant's Representative submitted a request to amend the application to increase the sum sought to £7,328.74. In support of the request, the Applicant's Representative provided an up to date rent statement and proof of notification on the Respondent in the form of a cover letter and Royal Mail recorded delivery receipt dated 4 August 2020.

The Case Management Discussion

- 4 The Case Management Discussion took place on 21 August 2020 by teleconference. Ms Euphemia Matheson appeared on behalf of the Applicant's Representative. The Respondent was not present.
- 5 Having noted that the application paperwork had been served on the Respondent by Sheriff Officers, the Legal Member determined to proceed with the Case Management Discussion in his absence having been satisfied that he had received proper notification of the date, time and procedures for joining the tele-conference.
- 6 As a preliminary matter, the Legal Member agreed to amend the sum sought by the Applicant to £7,328.74 together with interest from the date of decision. The Legal Member was satisfied that the amendment was not raising any new issues and therefore Rule 13 of the First-tier Tribunal Housing and Property Chamber Procedural Rules 2017 would apply. The Legal Member was satisfied that the require notice had been given to the Respondent under that Rule.
- 7 Ms Matheson thereafter addressed the Tribunal and confirmed an order was sought for payment in the increased sum together with interest at the rate of three per cent per annum. She confirmed that there had been a lack of engagement on the part of the Respondent. Sporadic payments had been made in the past but not formal payment plans had been offered.

Findings in Fact and Law

- 8 The parties entered into a Tenancy Agreement dated 19 August 2016, the term of which was a period from 25 August 2016 to 25 August 2017, both dates inclusive and monthly thereafter.
- 9 The tenancy was a Short Assured Tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 10 The tenancy was a joint tenancy between the Respondent and Mrs Karen McNair who were both jointly and severally liable under the terms of the agreement. Mrs McNair's interest in the tenancy terminated on 19 July 2019.
- 11 In terms of Clause 5 of the said Tenancy Agreement, the Respondent undertook to make payment of rent at the rate of £573.28 per month.
- 12 The Respondent has failed to obtemper his obligation to make payment of rent. As at the 1 August 2020, arrears in the sum of £7,328.74 are outstanding.
- 13 The Respondent is liable to make payment of the sum of £7,328.74 to the Applicant, as sums lawfully due under the terms of the Tenancy Agreement between the parties.

Reasons for Decision

- 14 The Tribunal was satisfied that the Respondent had received proper notification of the application and the Case Management Discussion. The Tribunal therefore considered it was able to continue with the Case Management Discussion in the absence of the Respondent. The Tribunal was further satisfied that it was able to make a determination of the application at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties.
- 15 Having considered the terms of the tenancy agreement and submissions from the Applicant, and based on its findings in fact, the Tribunal was satisfied that the Respondent was liable to pay the sum of £7,328.74. The Tribunal accepted the evidence of the Applicant that the Respondent had a contractual obligation to make payment of rent at the rate of £573.28 per month and had failed to do so. The Respondent had not sought to dispute the terms of the application and there was no evidence before the Tribunal to contradict the position put forward on behalf of the Applicant. The Tribunal therefore made an order for payment against the Respondent in the sum of £7,328.74 together with interest at the rate of three per cent per annum from the date of decision.

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.

21/08/20

Legal Member/Chair

Date