



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/20/0410

Re: Property at FT 3, 16 St Leonards Hill, Edinburgh, EH8 9RZ (“the Property”)

Parties:

Places For People Scotland Limited, 1 Hay Avenue, Edinburgh, EH16 4RN (“the Applicant”)

Mr Alan Boyd, Ms Sjoukje Hogsteen, FT 3, 16 St Leonards Hill, Edinburgh, EH8 9RZ (“the Respondents”)

Tribunal Members:

Sarah O'Neill (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment by the respondents of the sum of £5997.20 should be granted in favour of the applicant.

Background

1. An application was initially received on 6 February 2020 from the applicant’s representative for a payment order brought in terms of rule 111 (Application for civil proceedings in relation to a private residential tenancy) of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”). Further information which had been requested by the tribunal was submitted by the applicant’s representative on 11 February 2020
2. The applicant was seeking payment of rent arrears of £2678 from the respondents in relation to the property, being the amount of arrears outstanding up until 31 January 2020.

3. The application included: a copy of a lease between the applicant and Castle Rock Edinvar Association Limited dated 19 February 2013; the tenancy agreement between the parties; a rent increase notice sent to the respondents on 14 December 2018; and a rent statement showing the rent outstanding up until 31 January 2020 to be £2678.
4. The application was accepted for determination on 26 February 2020. Due to the Covid-19 pandemic, all case management discussions and tribunal hearings were suspended for several months. A case management discussion (CMD) was scheduled for 31 July 2020. The tribunal instructed sheriff officers to serve notice of the CMD, together with the application papers and guidance notes, on the respondents at the property address. A certificate of service was received from the sheriff officers confirming that the papers had been served on the respondents on 26 June 2020.
5. The tribunal issued a direction dated 2 July 2020 to the parties on 13 July 2020 in relation to both the present application and the accompanying eviction application, requiring the applicant to provide a copy of the appendix - or the relevant excerpt from the appendix – referred to in clause 1.1 of the lease between Castle Rock Edinvar Housing Association Limited and the applicant, in order to confirm that the property was included on the property list referred to that lease. The direction also required the applicant to provide evidence that the notice to leave had been successfully served on Ms Hogsteen, as the covering email appeared to have been sent to an incorrect email address. An email was received from the applicant's representative requesting an extension until 31 July to comply with the direction. The tribunal agreed to grant this extension.
6. No written representations or time to pay application were received from the respondents prior to the CMD.
7. An email was received from the applicant's representative on 16 July 2020 requesting to amend the application in terms of rule 14A of the 2017 rules to increase the sum claimed to £5997.20. Copy letters to the respondents advising them of this amendment request were attached to the email. These letters contained an incorrect tribunal case reference number for the application.
8. An email was received from the applicant's representative on 29 July 2020, advising that the respondents had abandoned the property and that the applicants had recovered possession. The applicant's representative therefore confirmed that the applicant wished to withdraw the accompanying eviction application (Reference no: FTS/HPC/CV/20/0410).

The Case Management Discussion

9. A case management discussion (CMD) was held on 31 July 2020 by telephone conference call. The applicant was represented by Ms Nicola Caldwell of TC Young Solicitors. The respondents were not present and were not represented.
10. The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a CMD had been duly complied with. The tribunal delayed the start of the CMD by 10 minutes, in case the respondents had been detained. They did not appear, however, and no telephone calls, messages or emails had been received from them. The tribunal therefore proceeded with the CMD in the absence of the respondents.
11. Ms Caldwell told the tribunal that she had not yet been able to obtain the information requested in the tribunal's direction from her client. She submitted that in any case, this information related to the eviction application only, and was not required in relation to the present application.
12. She told the tribunal that the applicant was unsure as to the exact date when the respondents had left the property, but that when the applicant had attended the property on 28 July 2020, they found it had been abandoned.
13. Ms Caldwell asked the tribunal to grant an order for the amended sum of £5997.20. She said that the letters to the respondents dated 16 July 2020 informing them of the amendment request had been posted first class on that date and were also sent to them by recorded delivery. She advised that she had received proof of delivery of the recorded delivery letters confirming that they had been signed for on 20 July 2020. Following a short adjournment, she emailed copies of these to the tribunal. She submitted that the amendment request had been intimated to the respondents 14 days prior to the CMD as required in terms of rule 14A of the 2017 rules, as the letters had been sent on 16 July, notwithstanding that they had not been signed for until 20 July. She pointed out that the letters had also been sent by first class post on 16 July.
14. Ms Caldwell submitted that although the case reference number on the letters of 16 July 2020 to the respondents was incorrect, this was simply an administrative error, which did not in itself invalidate them. There was no requirement under the rules to include the case reference number when intimating an amendment request. She pointed out that the names of the parties, the property details and the date and time of the CMD were correct.
15. The tribunal chairperson asked Ms Caldwell whether the applicant could provide an updated rent statement showing the level of arrears now being

sought. Following a further adjournment, Ms Caldwell produced an updated rent statement which had been provided by the applicant. This showed that no rent payments had been made since August 2019, and that the rent had been increased to £562 per month as at April 2020. The outstanding sum due as at 1 July 2020 for the period up to 31 July 2020 was £5997.20.

16. The tribunal chairperson noted that there was provision in paragraph 11 of the tenancy agreement for a tenancy deposit of £620 to be paid by the respondents to the applicant. She asked what the applicant's intentions were regarding the deposit. During the second adjournment, Ms Caldwell took instructions from her client about this. She told the tribunal that the applicant would need to inspect the property thoroughly to ascertain whether there had been any damage. If there were no damages to take into account, the applicant would be happy to deduct this from the sum granted in any order by the tribunal.

Findings in Fact

17. The tribunal made the following findings in fact:

- There was a private residential tenancy in place between the parties, which had commenced on 22 March 2018.
- The respondents left the property on or before 28 July 2020.
- The rent initially due under the tenancy agreement was £520 per calendar month, payable in advance on the 1st of each month. The rent was increased from 1 April 2019 to £535.60 per month, and from 1 April 2020 to £562 per month.
- As at 31 July 2020, the respondents owed the applicant the sum of £5997.20 in rental payments.

Reasons for Decision

18. The tribunal was satisfied in the absence of the appendix referred to in the lease between Castle Rock Edinvar Housing Association Limited and the applicant that the tenancy agreement was in any case a contractual agreement requiring the respondents to pay rent to the applicant.

19. The tribunal agreed to the applicant's amendment request to increase the sum claimed to £5997.20. In the circumstances, it was satisfied that the applicant had intimated its request to amend the sum claimed to both the tribunal and the respondents at least 14 days in advance of the CMD. It also agreed with Ms Caldwell that the inclusion of an incorrect case reference

number in the letters to the respondent was an administrative error, and this did not affect the validity of the intimation under section 14A of the 2017 rules.

20. Having considered the updated rent statement, the tribunal noted that this confirmed an outstanding balance of rent arrears up to and including 31 July 2020 in the sum of £5997.20. On the basis of all the evidence before it, the tribunal was satisfied that the respondents were due to pay this amount to the applicant and had been notified that this sum was owed by them. The tribunal therefore decided to make an order for payment by the respondents to the applicant of that sum.

Decision

The tribunal grants an order for payment by the respondents to the applicant for the sum of £5997.20.

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.

31 July 2020

Legal Member/Chair

Date