



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/20/0543

Re: Property at 7 Maltings Road, Kirkcaldy, Fife, KY1 2EP (“the Property”)

Parties:

Kingdom Initiatives Limited, Saltire Centre, Pentland Court, Glenrothes, KY6 2DA (“the Applicant”)

Mr Kenneth Anderson, 7 Maltings Road, Kirkcaldy, Fife, KY1 2EP (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment of Six thousand seven hundred and thirty eight pounds and fourteen pence (£6,738.14) in favour of the Applicant against the Respondent

Background

- 1 By application to the Tribunal, the Applicant sought an order against the Respondent for unpaid rent arrears in the sum of £3,157.70. In support of the application the Applicant submitted copy Short Assured Tenancy Agreement together with Form AT5, Notice to Quit and Notice under Section 33 of the Housing (Scotland) Act 1988, Notice to Fife Council under section 11 of the Homelessness (Sc) Act 2003, Rent Statement and Copy Lease between Fife Council and the Applicant.
- 2 By Notice of Acceptance of Application 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 14 October 2020. Due to the imposition of restrictions arising from

the Covid-19 pandemic a direction was issued to the parties by the Chamber President confirming that the Case Management Discussion would take place by teleconference. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was served upon the Respondent by Sheriff Officers.

The Case Management Discussions

- 3 The first Case Management Discussion took place on 21 August 2020. Mr Neil Casey, from Shepherd and Wedderburn, appeared on behalf of the Applicant. The Respondent was present. The Respondent advised that he simply could not afford the rental payments as he was currently unemployed. However he was in the process of obtaining another job as well as seeking an increase of his benefits and wished to complete a time to pay application. He confirmed that he had been provided with a time to pay application as part of the documents served upon him. The Legal Member explained the information required for a time to pay application and the legal implications of such an order. The Legal Member further noted the Applicant's wish to amend the application to reflect the current arrears and submit an updated rent statement to that effect. Both parties therefore agreed the best way forward would be to adjourn the Case Management Discussion for the Applicant to seek amendment of the application if he so wished, for the Respondent to submit a time to pay application if he so wished and for the Respondent to contact the Applicant to discuss possible settlement.
- 4 By email to the Tribunal dated 8 October 2020 the Applicant's Representative submitted a copy letter that had been sent to the Respondent confirming that the arrears had increased to £6,738.14 accompanied by an updated rent statement. The Applicant's Representative advised that the Applicant sought amendment of the application to reflect that sum. No written representations were received from the Respondent.
- 5 The second Case Management Discussion took place by teleconference on 14 October 2020. The Applicant was represented by Ms Alyson Shaw from Shepherd and Wedderburn. The Respondent was not in attendance. The Legal Member noted that he had been given notification of the date, time and instructions for joining the tele-conference by recorded delivery on 15 September 2020. He had also been present at the first Case Management Discussion and had been given guidance on how to submit a time to pay application, however nothing had been received by the Tribunal in this regard. Ms Shaw confirmed that the Applicant had not had any contact from the Respondent since the previous Case Management Discussion. The Legal Member considered that the culmination of these issues led to a reasonable assumption that the Respondent had chosen to no longer engage with the proceedings despite having been given the opportunity to do so. Accordingly

the Legal Member determined to proceed with the Case Management Discussion in his absence.

- 6 As a preliminary matter the Legal Member noted the Applicant's request to amend the sum claimed to £6,738.14 which had been submitted by email dated 8 October 2020. In terms of Rule 13 of the First-tier Tribunal (Housing and Property Chamber) Procedural Rules 2017, a party may amend their written representations within 7 working days prior to the date fixed for the Case Management Discussion with the consent of the First-tier Tribunal. The Legal Member was content that the Respondent had received notification in writing of the request to amend by virtue of the letter sent to him by the Applicant's Representative, a copy of which had been submitted to the Tribunal. The Legal Member therefore considered he had received fair notice of the proposal and agreed to amend the application to reflect the sum of £6,738.14 as at 6 October 2020.
- 7 Ms Shaw advised that the Applicant was seeking an order for payment of the amended sum by instalments of £500 per month. There had been previous discussions whereby the Respondent had agreed to commence payments at this rate from 1st October 2020. However he had failed to make the first payment therefore the Applicant sought the protection of a formal order for payment. The Legal Member queried whether she could make a time to pay order in the absence of an application from the Respondent to that effect. Ms Shaw wasn't sure but advised that her secondary position would be to seek an order for payment for the whole amount due.

Findings in Fact and Law

- 8 The parties entered into a Tenancy Agreement dated 15 November 2017 in respect of the property.
- 9 In terms of Clause 5 of the said Tenancy Agreement the Respondent undertook to make payment of rent monthly in advance to the Applicant at the rate of £417.76 per month.
- 10 The last payment made to the rent account was a payment of £938.91 on 1 October 2019.
- 11 As the 6 October 2020 rent arrears in the sum of £6738.14 were outstanding.
- 12 The Respondent is due to pay the sum of £6738.14 to the Applicant in terms of the Tenancy Agreement between the parties.

Reasons for Decision

- 13 Having considered the written representations from the parties and the verbal submissions at the Case Management Discussions the Tribunal determined it

could make a decision on the application and that to do so would not be prejudicial to the interests of the parties. There were no identified issues in dispute and therefore no requirement to fix a hearing in the matter.

14 Having considered the terms of the tenancy agreement and rent statements produced by the Applicant, and based on its findings in fact, the Tribunal was satisfied that the Respondent was liable to pay the sum of £6,738.14. He had not sought to dispute this in any way during his verbal submissions to the Tribunal at the first Case Management Discussion and the Tribunal was satisfied on the basis of the documentary evidence before it, and having heard the verbal submissions from the Applicant's Representative, that the sum was lawfully due. The Respondent had been given the opportunity to submit a time to pay application for payment by instalments but had failed to do so. Accordingly the Tribunal did not consider it was in a position to make a time to pay order in the absence of the information required by such an application.

15 The Tribunal therefore made an order in the sum of £6,738.14 against the Respondent.

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.

Ruth O'Hare

Ruth O'Hare

14/10/2020

Legal Member/Chair

Date