



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/20/1074

Re: Property at 71 Stormyland Way, Barrhead, G78 2RR (“the Property”)

Parties:

Mrs Tahira Saddiq, 18 Urrdale Road, Glasgow, G41 5DD (“the Applicant”)

Mr Kevin Hearton, 71 Stormyland Way, Barrhead, G78 2RR (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Leslie Forrest (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment in the amount of £2120 should be made.

Background

The Applicant lodged, on 15th April 2020, an Application with the tribunal under Rule 111 of the First-Tier Tribunal for Scotland Housing and Property Chamber Procedure Regulations 2017 Rules and Section 71(1) of the Private Housing (Tenancies) Scotland Act 2016.

Lodged with the application were

- 1) Copy Tenancy Agreement commencing 10th November 2018;
- 2) Rent Arrears Statement as at 9th April 2020.

The Applicant was seeking an order for payment of the sum of £3,105.

Case Management Discussion

A Case Management Discussion (“CMD”) took place on 17th August 2020. Both parties appeared, and both parties were unrepresented. The Respondent sought an adjournment to obtain legal representation. This was opposed by the Applicant. After considering the overriding objective of the Tribunal and the interests of justice, the Tribunal decided to refuse the application to adjourn.

It was clear at the CMD that there were matters in dispute, and the Tribunal decided to fix a Hearing. The issues to be determined are as follows:-

- 1) What rent was due to be paid under the Tenancy Agreement;
- 2) Whether any rent was due from the date of commencement of the tenancy until 10th January 2019;
- 3) How much arrears are due to be paid by the Respondent to the Applicant.

The Tribunal reminded the parties that they should inform the Tribunal no later than 7 days before the Hearing of the identity of any witnesses and documents upon which they intended to rely. It was also noted that the Tribunal would be assisted if the parties lodged up to date statements showing the dates rent fell due and payments received up to the date of the hearing.

The Hearing

The hearing took place by teleconference on 1st October 2020. The Clerk was Mr Colquhoun. The Applicant, dialled in prior to 10am. Neither Mr Hearton, nor any representative on his behalf dialled in. The Chairperson commenced the hearing at 10.10am having felt that sufficient time had been given. Both members had checked the papers and were satisfied that Mr Hearton had been given clear and sufficient notification of the hearing, by way of email of 3rd September 2020.

The Chairperson introduced herself, and the Housing Member, Mr Forrest. She confirmed the procedure that would be followed, and confirmed that the Applicant could not record the proceedings. She confirmed that the Applicant understood how

the hearing would be conducted and that she appreciated that if she required a break she could request it.

The Chairperson asked the Applicant to clarify what she was seeking. The Applicant said that at the time the application was lodged the rent outstanding was £3,105. However, the rent outstanding had obviously increased since then, and she would be seeking the full sum.

The Chairperson noted that the Applicant had not lodged any up to date rent statement, nor had she made any application to the Tribunal to amend the sum that she was seeking. The Applicant agreed that she had not. She said she had not realised that she would need to do so. The Chairperson pointed out that the CMD Note had suggested it would be helpful for an up to date statement to be lodged in time for the Hearing. The Chairperson confirmed that the Applicant could not seek anything more than the amount in the application, but could pursue further arrears separately.

Mr Forrest had some questions to ask the Applicant. He explained that the questions he was going to ask were in order that the Tribunal could show that they had been fair to both parties.

Mr Forrest asked the Applicant to tell the Tribunal how the Respondent had come to be the tenant of the property. The Applicant explained that the flat had been flooded in or around 2015/2016 and that it had been completely refurbished after that. The tenant prior to the Respondent didn't use the second bedroom, and when the Applicant took possession of the property again she felt that it was cold. She decided to put a dehumidifier in to see if it would make a difference.

The Applicant explained that the flat was advertised at a rent of £400 per month. The Applicant said that when the Respondent came to view the flat he agreed to pay the deposit of £400, and the first months' rent in advance of £400. However, he told the Applicant that he could get Housing Benefit at the rate of £495, and that was why the rent was set at that rate.

The Applicant explained that she had asked for the deposit and first month's rent in advance, the sum of £800. The Respondent had then telephoned her and said he could only pay £400 at present, and asked if he could have the keys. The parties met a few days later and the Respondent still only had £400. He said that he would take the Lease and register it with the Council, and apply for Housing Benefit. The Applicant explained that she had felt sorry for him and agreed on the basis that he

would pay the further £400 in the next few days. He did not do so, and gave her excuse after excuse.

Mr Forrest clarified that the property had been advertised at £400 per month and the Applicant confirmed that it had. Mr Forrest asked the Applicant how long she had been letting properties. The Applicant said that she had had this flat since 2007 and although she had been a registered Landlord for that period of time, it had been her husband who had dealt with properties. They had separated a few years ago and the Applicant had taken on the letting responsibilities herself. She said her eyes had been opened by the Respondent's behaviour. Mr Forrest confirmed with the Applicant that she had been a Landlord since 2007 and had been letting properties in her own name for over 10 years. He expressed surprise that the Tenancy Agreement which the Respondent had signed was not in the correct form. The Applicant said that she had not kept up to date with changes in the legislation. She did not use a letting agent in order to save on costs.

Mr Forrest again confirmed that the flat had been advertised at a rent of £400 per month. The Applicant said she realised it was not the right thing to do but both parties had agreed that the rent would be £495 because that was what the Respondent thought he could obtain by way of Housing Benefit. She said that in hindsight she should have stuck to the £400 she was looking for rather than the £495 that he offered.

Mr Forrest asked the Applicant about the entry in the rent statement which implied that there had been a change agreed in the rental amount from £495 to £450 per month, due to Housing Benefit issues. The Applicant said that the Respondent told her he had lodged the Lease with the Council and asked for a backdate of Housing Benefit. The Applicant understood that the Respondent had not given the Council the correct move in date and therefore they would not pay him Housing Benefit for two properties. They put a solution to him but as far as she was aware he did not want to accept the solution. She said that she told the Respondent that she would agree to the rent being reduced to £450 per month until he was up to date and at that point she would reduce it further to £425 per month. Mr Forrest asked if there was any documentation regarding this change. The Applicant confirmed it had just been in a conversation. Mr Forrest asked the Applicant what dealings she had had with the Housing Benefit Department herself in respect of the Respondent. The Applicant said that she had tried to speak to the Housing Benefit Department but they would not speak to her and quoted Data Protection. She said that she did not know if the Respondent ever received any Housing Benefit.

Mr Forrest asked regarding Section 6 of the Tenancy Agreement, which stated that the Respondent paid a deposit. He asked the Applicant if the Respondent had ever paid the deposit. She confirmed that he had not. Mr Forrest said that the Tenancy

Agreement stated that a deposit had been paid so therefore it was implied that that deposit had been paid. He asked why the Applicant had given the keys to the Respondent in those circumstances. The Applicant said that she had no answer to that question. It was foolish or stupid and she felt sorry for the Respondent.

The Tribunal had no further questions and decided to adjourn to consider matters.

The Tribunal reconvened after 15 min and gave the decision to the Applicant.

Findings In Fact

1. The Applicant advertised the property for rent at a rental of £400 per month;
2. The parties had a discussion prior to the Respondent signing the Tenancy Agreement whereby the Respondent said he could get £495 per month by way of Housing Benefit;
3. The parties entered in to a Tenancy Agreement, dated 10th November 2018 which stated that the first month's rent was £400 and the rent thereafter would be £495 per month;
4. The Applicant had expected to obtain a rent of £400 per month when she advertised the property for let;
5. Despite the Tenancy Agreement stating that a deposit of £400 had been paid, the Respondent did not pay a deposit;
6. The Respondent obtained the keys to the property on the commencement date.

Reasons For Decision

The Tribunal considered all that the Applicant had said. She was very candid in her evidence. It was clear that although the Tenancy Agreement stated that the rent was £495 per month, the Applicant had advertised it at £400 per month, and had not expected to get any more. The parties had agreed that the rent should be £495, based on the strength of what the Respondent thought he would be entitled to by way of Housing Benefit. The Applicant, from her evidence, did not think that the respondent had obtained Housing Benefit and had been prepared to reduce the rent to £450, and then £425. The Tribunal took the view that notwithstanding the terms of the Tenancy Agreement the intended rent had been £400 per month, and it was fair

in the circumstances to hold that the rent to be paid by the Respondent was £400 per month. The Tribunal made some calculations and, given that the Respondent had accepted at the CMD that the sums shown on the rent statement as paid by him were accurate, the rent outstanding was £2120.

As the Respondent had been given the keys on the commencement date no adjustment was required for the period to 10th January 2019.

NB: It transpired after the hearing that the respondent had emailed the Tribunal administration at 8.49am saying that he would not be dialling in as he was seeking an emergency medical appointment. His email did not seek an adjournment. This email did not contain a case reference and by the time that was provided the Hearing had finished. The Tribunal takes the view that the email would not have influenced their decision to proceed with the Hearing in the absence of the Respondent. He did not request an adjournment.

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.

A Kelly

Legal Member: Alison J. Kelly

Date: 1st October 2020