



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/20/1466

Re: Property at G/R, 11 Morgan Place, Dundee, DD4 6NA (“the Property”)

Parties:

Mr Stewart Dewar, 45 Penicuik Road, Roslin, Edinburgh, EH25 9LJ (“the Applicant”)

Mr Roddy Balfour, 40 Alloway Terrace, Dundee, DD4 8AL (“the Respondent”)

Tribunal Members:

Richard Mill (Legal 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 be made against the Respondent in the sum of Seven Thousand Eight Hundred and Fifty Two Pounds and Seventy Seven Pence Sterling plus interest at the rate of 3% per annum from 16 December 2020 until payment

Introduction

This application seeks a payment order relating to rent arrears which was lodged at the same time as an eviction application under application reference FTS/HPC/EV/20/1449. The eviction application was granted at the first CMD on 25 August 2020.

Reference is made to the Case Management Discussion (CMD) Notes issued following the two previous hearings on 25 August and 5 November 2020.

At the first CMD in August 2020 the level of rent arrears was disputed but both parties were confident that the matter would resolve itself by way of agreement. In the circumstances no two member evidential hearing was fixed. A fresh CMD was fixed with a Direction being issued which required the respondent, within 14 days, to

lodge a full written submission setting out his defence to the application, and also to lodge all documentary evidence which he relies upon, to include all bank statements, written witness statements of himself and any relevant others, and photographs.

Written representations were received on 8 September 2020. No other relevant documents were received. Two issues were raised on behalf of the Respondent. Firstly, housing benefit entitlement and secondly, the condition of the property.

At the second CMD on 5 November 2020 the Respondent's representative advised that the condition of the property was no longer an issue in this application. She advised that it was accepted that the total arrears outstanding, which are reflected in a detailed rent statement is £7602.77 were due. Despite complaining previously that the rent statement produced was inaccurate the respondent's representative accepted that this is the sum which is outstanding under the lease.

The respondent's representative confirmed on 5 November 2020 that the only element of the respondent's written submissions still to be relied upon is that which relates to housing benefit entitlement. She stated that investigations were ongoing with Dundee City Council regarding housing benefit entitlement. A review had been requested of initial decisions. It was expected that a final decision would be reached within the next month. In the circumstances the application was continued to a further CMD.

The fresh CMD was assigned for 16 December 2020 at 10 am. The applicant, Mr Stewart Dewar, was represented by Mr Alec Campbell of Lara Letting Ltd. The respondent, Mr Roddy Balfour has been represented by Ms Rebecca Menzies of Dundee North Law Centre throughout the process. She emailed the Tribunal the day before the CMD – on 15 December 2020, advising in writing that the housing benefit application / challenge process has not been successful. She submitted that the Respondent no longer opposed the application for recovery of rent or the additional charges for removal of the respondent's possessions.

Findings and Reasons

The property is G/R, 11 Morgan Place, Dundee DD4 6NA. The parties entered into a short assured tenancy which commenced on 6 November 2016. Rent was stipulated at a rate of £550 per month.

The respondent fell into arrears of rent. When he vacated the property in September 2020 the total rent arrears stood at £7,602.77. This is evidenced by a clear rent statement which is not the subject of dispute or challenge by the respondent.

The applicant has also vouched the costs incurred by him to remove the respondents possessions left at the time he left the property. This is in the sum of £250. This invoice and these costs are not the subject of dispute or challenge.

The Tribunal attached weight to the documentary evidence as they are credible and reliable.

The total sum sought is £7,852.77. The applicant is entitled to recover these costs under and in terms of the lease arrangement between the parties.

The written application seeks interest at the rate of 8%. Such a request is equivalent to a crave for judicial interest which has no application to the First-tier Tribunal. The Administration of Justice (Scotland) Act 1972, Section 4 as amended by the Act of Sederunt (Interest in Sheriff Court Decrees and Extracts) 1993 covers the payment of judicial interest in the Sheriff Court and these provisions have not been extended to the Tribunal. The payment of a judicial rate of 8% is no statutory basis for the Tribunal. A rate more in line with the use value of the money and the loss actually suffered by the applicants corresponding to the investment/borrowing rate which would be real loss suffered by the applicants can be justified. The current rate borrowing rate for short-term commercial loans is approximately 3% per annum and that is an appropriate rate of interest to be imposed by the Tribunal.

The Order made in the total sum sought of £7,852.77 is made in the absence of the respondent but with his consent as per the terms of the written submissions lodged by his solicitor.

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.



16 December 2020

Legal Member/Chair

Date