



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/EV/20/1700

Re: Property at 34J Lochend Road, Musselburgh, EH21 6BG (“the Property”)

Parties:

Mr William Berry, C/o Beveridge and Kellas Solicitors, 52 Leith Walk, Edinburgh, EH6 5HW (“the Applicant”)

Mr Andrew Munson, 34J Lochend Road, Musselburgh, EH21 6BG (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatrige (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order for the amount of £5,628.54 by the Respondent to the Applicant should be granted.

Background and Case Management Discussion

1. The application for an order for payment of rent arrears under S 71 of the Private Housing (Tenancies) (Scotland) Act 2016 arising from a Private Residential Tenancy Agreement between the parties was made by the Applicant's representatives Beveridge & Kellas Solicitors on 7 August 2020.
2. The following documents were lodged to support the application:
 - a. A letter from the Applicant's solicitors dated 4 September 2020 setting out the details of the tenancy agreement
 - b. Schedule of Rent Arrears up to 7 August 2020
 - c. Copy S 11 Notice
 - d. Copy Notice to Leave dated 12 March 2020 together with certificate of service by Sheriff Officers on 13 March 2020 and Notice to Quit- Schedule of Rent Arrears document

3. The application was for a payment order in the sum £5,628.54 and indicated as the Rule applicable Rule 111 of the Procedural Rules.
4. On 4 November 2020 the Respondent was served by Sheriff Officers with the case papers and the notification for the Case Management Discussion (CMD) on 7 December 2020. The Tribunal was satisfied that the Respondent had the required notice of the CMD as set out in Rules 17 (2) and 24 (2) of the Procedural Rules.
5. No representations from the Respondent were received by the Tribunal.
6. The CMD took place on 7 December 2020 by telephone conference call.
7. Neither the Applicant nor the Respondent participated. The Applicant was represented by Ms Harrison from Beveridge & Kellas solicitors.
8. Ms Harrison confirmed that the Applicant cannot locate the tenancy agreement. Her firm had not been involved in drawing up the tenancy agreement. The Applicant states that the tenancy agreement was entered into on 1 January 2019 and the Respondent only paid rent for the first two months in the full sum due of £525 per month payable in advance. Thereafter the arrears started to build up as shown on the Schedule of Rent Arrears lodged. No further payments had been made since the application was lodged and the arrears had now increased to £7,731.15 as at the date of the CMD.
9. Ms Harrison advised that there had been no contact from the Respondent since July 2020, when the Applicant had stated to the Respondent that he was seeking a new tenancy from the Council.
10. The Applicant has no information from the Respondent as to whether the Respondent had applied for any relevant benefits.
11. Ms Harrison moved for a payment order for the sum of £7,731.15.
12. She did not insist on any interest to be included in the order.

Findings in Fact:

1. The property was let on a Private Residential Tenancy Agreement commencing on 1 January 2019.
2. The parties are the landlord and tenant of said Tenancy Agreement.
3. The tenancy is ongoing.
4. The monthly rent for the property was £525 payable monthly in advance.
5. Rent arrears accrued as per the Schedule of Rent Arrears
6. The arrears of rent due and outstanding as at the date of the CMD on 7 December 2020 are £7,731.15
7. The arrears stated in the application made on 7 August 2020 were £5,628.54

Reasons for Decision:

1. The Tribunal considered that the material facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or
- (c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;
- (b) identifying what facts are agreed between the parties;
- (c) raising with parties any issues it requires to be addressed;
- (d) discussing what witnesses, documents and other evidence will be required;
- (e) discussing whether or not a hearing is required; and
- (f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

2. However, in terms of Rule 18 of the Rules of Procedure:

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

- (a) may make a decision without a hearing if the First-tier Tribunal considers that—
 - (i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and
 - (ii) to do so will not be contrary to the interests of the parties; and
- (b) must make a decision without a hearing where the decision relates to—
 - (i) correcting; or
 - (ii) reviewing on a point of law,a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

3. The documents lodged are referred to for their terms and held to be incorporated herein.

4. The Tribunal did not consider that there was any need for a hearing as there had been no representations from the Respondent and the application had not been opposed.

5. The Tribunal makes the decision on the basis of the documents lodged by the Applicants and the information given at CMD.

6. The application and the letter of 4 September 2020 from the Applicant's solicitors were part of the documents served on the Respondent on 4 November 2020. The documents served on the Respondent on 13 March 2020 also included a rent statement referring to a monthly rental charge of £525. The Respondent had fair notice of the representations of the Applicant forming the reasons for the application and has not challenged these. As no representations were received from the Respondent by the Tribunal, the facts of the case are not in dispute and are accepted by the Tribunal.

7. The Tribunal is thus satisfied that the Respondent had entered into a Private Residential Tenancy Agreement with the Applicant for the property with a monthly rental charge of £525 and a start date of 1 January 2019. The Tribunal is further satisfied that the rent arrears are as set out in the Schedule of Rent Arrears showing the gradual increase of arrears since March 2019 to 7 August 2020. As at that date the arrears were £5,628.54.

8. The Tribunal accepts that no further payments have been made and that there is no evidence to suggest that the non payment of rent is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit to the Respondent.

9. There was no amendment of the sum claimed in advance to the CMD. In the circumstances the Tribunal considered that there had been no due notice given to the Respondent that the Applicant would move for an increased sum at the CMD. The application included no wording to indicate that the arrears figure would be updated if the arrears increased. In the circumstances the Tribunal was not minded to allow an amendment to a higher amount than stated in the application at the CMD in terms of 14A of the Procedural Rules.

10. The Applicant is entitled to a payment order for the sum of £5,628.54 as claimed in the application for rent arrears accrued under the tenancy agreement for the period up to and including 7 August 2020.

11. Judicial interest at 8% as claimed in the application does not apply to proceedings before the Tribunal. This part of the application was no longer insisted upon.

Decision:

The Tribunal grants the order for payment of the amount of £5,628.54 by the Respondent to the Applicant.

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.

Petra Hennig McFatridge



Legal Member/Chair

7 December 2020
Date