



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/20/1800

Re: Property at 51 Warren Road, Hamilton, ML3 7QJ (“the Property”)

Parties:

Scottish Midland Co-operative Society Limited, Hillwood House, 2 Harvest Drive, Newbridge, EH28 8QJ (“the Applicant”)

Mr Jason Little, 7 Victoria Place, Bellshill, ML4 3BY (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be made against the respondent in the sum of Nine Hundred and Seventy Four Pounds and Thirty Seven Pence (£974.37) with interest at the rate of 3% per annum from the date of decision until payment; subject to a time to pay direction which requires the respondent to pay at the rate of £100 per month

INTRODUCTION

This is an application under Rule 111 and Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016.

Service of the application and intimation of the CMD was made upon the respondent by sheriff officer delivery on 18 September 2020.

In advance of the CMD, the applicants’ agent made an application for postponement of the CMD and for a continuation for 6 months. The purpose of this is that the Tribunal was advised that the respondent had agreed that the sums sought in the application was due and that agreement had been reached that the sum would be repaid at £100

per month. The continuation was to allow the applicants to monitor payments. The Tribunal refused the postponement application. It was not in the interests of justice to postpone the application before the Tribunal for such a lengthy period to monitor payments. This wastes the resources of the Tribunal and incurs unnecessary public expense. As the respondent appeared to accept the sum sought and further, instalment payments had been agreed, then the appropriate course of action was for the respondent to admit the claim in a time to pay application and for such application to be considered at the CMD.

No formal admission of the claim or time to pay direction was received. The respondent did not lodge any response or written submissions.

The Case Management Discussion (CMD) took place by teleconference at 11.30 am on 15 October 2020

At the CMD the applicant was represented by Mr David Alexander, solicitor, Messrs Gilson Gray LLP. The respondent participated personally and represented his own interests.

FINDINGS AND REASONS

The property is 51 Warren Road, Hamilton ML3 7QJ.

The applicants are Scottish Midland Co-operative Society Limited. They are the former landlords. The respondent is Mr Jason Little. He is the former tenant.

The parties entered into a Private Residential Tenancy which commenced on 17 January 2018. The rent was specified at £550 per calendar month.

The respondent vacated the property in or about February 2019.

The respondent failed to pay rent for the period between 28 December 2018 and 28 January 2019 and there were other shortfalls in payments. The respondent's deposit of £650 was applied to the total arrears leaving an outstanding balance due of £676.55. This is admitted by the respondent.

The respondent also accepted that he is due to reimburse the applicants in respect of the reasonable costs incurred as a consequence of his failure to pay rent. This is an additional sum of £397.82. This sum is comprised of expense incurred directly by the applicant and also by the applicant's solicitors. These sums are vouched.

The Private Residential Tenancy Agreement makes provision for such additional charges to be recovered. The sums are not excessive nor unfair.

The total sum sought by the applicant is £1,074.37 which is the total of the rent arrears outstanding and the additional charges.

Prior to the CMD the respondent had made an initial payment in the sum of £100 reducing the total sum due to £974.37. Both parties agreed this was the amount outstanding and due.

In the application the applicants also seek interest at the rate of 8% per annum. 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% has 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. Both parties accepted that interest at the rate of 3% was proportionate and reasonable.

The parties were in agreement that a payment order should be made in the sum of £974.37 and that this should be on the basis of a time to pay direction in the sum of £100 per month. No such application was however before the tribunal. In the circumstances the teleconference hearing was adjourned for half an hour so as to enable the respondent to complete such an application with the assistance of the tribunal case worker. This was undertaken.

The tribunal thereafter made a payment order against the respondent in the sum of £974.37 with interest at the rate of 3% per annum, subject to a time to pay direction for payment at the rate of £100 per month.

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.

Richard Mill

15 October 2020

Legal Member/Chair

Date