



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/20/1819

Re: Property at 183 Flat 6 Broughton Road, Edinburgh, EH7 4LN (“the Property”)

Parties:

Mr Massimo Circi, 10 Elgin Terrace, Edinburgh, EH7 5NN (“the Applicant”)

Mr Steven Sibbald, 183 Flat 6 Broughton Road, Edinburgh, EH7 4LN (“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 Two thousand two hundred and three pounds and ninety six pence (£2,203.96) Sterling 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 £900. In support of the application the Applicant submitted copy Short Assured Tenancy Agreement between the parties and a Rent Statement. The Applicant further confirmed that a previous order for payment in respect of the same tenancy had been granted against the Respondent under Case Ref FTS/HPC/CV/19/3957.
- 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 on 16 September 2020.

- 3 By email dated 14 September 2020 the Applicant sought to amend the sum claimed to £1800 as at that date. In support of this request the Applicant provided an up to date rent statement. A copy of the request was intimated to the Respondent. The Applicant sent a further request by email dated 30 September 2020 to increase the sum claimed to £2,203.96 which was intimated to the Respondent.
- 4 By email dated 6 October 2020 the Respondent submitted written representations in response to the application. He advised of his intention to submit a time to pay application however he was unable to do so at this stage due to uncertainty arising from his eviction from the tenancy and his lack of employment. He advised that he had faced issues such as redundancy, divorce, lack of income during the pandemic and responsibilities for caring and homeschooling his two children. He expressed his regret at having found himself in the situation he was in, however he was awaiting the outcome of several job applications and hope to be able to resume employment from the end of November onwards at which point he could submit a time to pay application. The Respondent further highlighted the deposit of £800 which he submitted could be applied to the outstanding arrears. A copy of the Respondent's representations were provided to the Applicant.

The Case Management Discussion

- 5 The Case Management Discussion took place by teleconference on 14 October 2020. The Applicant was present. The Respondent did not attend. The Legal Member noted that service of the application paperwork together with the date, time and details for joining the case conference had been served upon the Respondent by Sheriff Officers and he had acknowledged same through his written representations to the Tribunal. She therefore determined to proceed in the Respondent's absence.
- 6 The Legal Member explained the purpose of the Case Management Discussion. As a preliminary matter she noted the Applicant's latter request to amend the sum claimed to £2,203.96 which had been submitted by email dated 30 September 2020. In terms of Rule 14A of the First-tier Tribunal (Housing and Property Chamber) Procedural Rules 2017, a party may amended their written representations to introduce new issues provided notice is given at least 14 working days prior to the date fixed for the Case Management Discussion. The Legal Member was content that the Respondent had received notification in writing of the request by virtue of an email from the Tribunal. The Legal Member therefore considered he had received fair notice of the proposal and had not sought to dispute same in his

written representations. She therefore agreed to amend the application to reflect the sum of £2,203.96.

- 7 Mr Circi confirmed that he had received the written representations from Mr Sibbald from the Tribunal. He noted that Mr Sibbald was asking for a time to pay application however Mr Circi submitted that there had been a proven history of irresponsible and unreasonable behaviour on the part of the Respondent. Mr Circi explained that there was nothing new in what the Respondent was saying in his written representations and Mr Circi had no confidence in his ability to make payments. There had been constant delays and time wasting on the Respondent's part. In support of this, Mr Circi pointed to applications he had previously made to the Tribunal for repossession of the property and recovery of rent arrears, both of which had been granted in his favour. Mr Circi explained that the property was due to be repossessed tomorrow as a result. In relation to the Respondent's comments regarding the deposit, Mr Circi explained that he would be seeking to use that sum to cover any damages following the Respondent's departure. He was aware that there had been damage to a sofa which would require to be addressed and the Respondent was aware of this. In conclusion Mr Circi asked the Tribunal to grant an order for the remainder of the sums due up to the date of the repossession, being £2,203.96.

Findings in Fact and Law

- 8 The parties entered into a Tenancy Agreement dated 12 November 2017 in respect of the property.
- 9 The said Tenancy Agreement provides that the rent is due to be paid by the Respondent at the rate of £850 per month. This increased to £900 per month in January 2019.
- 10 The Applicant obtained an order for payment from the Tribunal under Case Reference CV/19/3957 in respect of rent arrears in the sum of £5850 as at 12 July 2020.
- 11 The Respondent has since accrued further arrears and related costs in relation to the property in the sum of £2,203.96.
- 12 The Respondent is due to pay the sum of £2,203.96 to the Applicant.

Reasons for Decision

- 13 Having considered the written representations from the parties and the verbal submissions at the Case Management Discussion the Tribunal determined it could make a determination of 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. It was clear from the written representations submitted by the Respondent that he did not dispute the sums were due.

- 14 Having accepted the terms of the tenancy agreement and rent statement 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 £2,203.96. The Tribunal found the verbal submissions from the Applicant at the Case Management Discussion to be a credible account of events and did not therefore consider the Respondent's request for additional time to be reasonable in the circumstances. The Tribunal would note however that there is nothing to prevent parties from entering into informal discussions regarding payment agreements out with these proceedings if they so wish.
- 15 The Tribunal therefore made an order in the sum of £2,203.96 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

Legal Member/Chair

14/10/2020

Date