



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations)

Chamber Ref: FTS/HPC/CV/20/2044

Re: Property at 30 Shore Street, Inverness, IV1 1NG (“the Property”)

Parties:

Mr Thomas Stuart Brown, 9 Glenburn Drive, Inverness, IV2 4ND (“the Applicant”)

Mr Jose Lago Entenza, 30 Shore Street, Inverness, IV1 1NG (“the Respondent”)

Tribunal Members:

Nicola Weir (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 against the Respondent in favour of the Applicant in the sum of £7,240 be made.

Background

1. By application dated 25 September 2020, the Applicant sought a payment order in the sum of £5,710 against the Respondent in respect of rent arrears incurred in respect of the Property in terms of Rule 70 of the Regulations.
2. Supporting documentation was submitted in respect of the application, including a Rent Statement, copies of excerpts of the Lease and correspondence with the Tenant.
3. A Legal Member of the Tribunal with delegated powers from the Chamber President subsequently issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations on 26 November 2020. A Case Management Discussion (“CMD”) was assigned for 18 January 2021. Notification of the CMD and copies of the case papers were served on the Respondent by

Sheriff Officer on 9 December 2020. Written representations were to be lodged by 30 December 2020. On 10 December 2020, the Applicant's representative emailed the Tribunal Administration an Updated Rent Statement showing the amount now owing in respect of rent arrears had increased to £7,240. This email was intimated to the Respondent. On 21 December 2020, a representative from CAB Inverness emailed the Tribunal Administration advising that she had just been instructed by the Respondent, required to investigate the position with regard to his Universal Credit payments and sought an adjournment of the CMD scheduled for 18 January 2021. This email was intimated to the Applicant's representative who objected to the postponement request in the circumstances. The postponement request was considered by a Legal Member of the Tribunal and granted.

4. A fresh CMD was scheduled for 15 February 2021 at 10am and details were intimated to parties. Intimation was made to the Respondent himself via the Royal Mail 'signed for' service on 11 January 2021 and Royal Mail records show this was successfully delivered/signed for on 12 January 2021. Intimation was also made to the Respondent's CAB representative by email on 11 January 2021. She responded by email that day to advise that, having investigated the Respondent's benefits position, she would no longer be representing him in this matter and had advised him accordingly. No written representations were lodged by the Respondent and there was no contact by him to the Tribunal Administration prior to the CMD.

Case Management Discussion

5. On 15 February 2021, the Applicant's representative, Mr Ewen Smith of Scottish Highland Property Services, participated in the CMD. The Legal Member delayed the start of the CMD until 10.05am to see if the Respondent joined but he did not do so.
6. After introductions and introductory remarks by the Legal Member, The Applicant addressed the Application and confirmed that he was seeking an order for payment in the increased sum of £8,260 in respect of the rent arrears accruing to date.
7. As a preliminary issue, the Legal Member considered the Applicant's request to amend the application by seeking the increased sum of £8,260. Having regard to Rule 14A(1) of the Regulations, which specifically mentions amendment to the sum claimed, the Legal Member stated that she did not consider that the oral request to amend had been made in accordance with that rule in that the Applicant had not intimated the proposed amendment to the Tribunal at least 14 days prior to the CMD and the Respondent therefore had no knowledge of it or opportunity to comment on it prior to the CMD. The Legal Member accordingly refused to allow the amendment and gave the Applicant the option of continuing the CMD to a later date to allow the amendment to be made timeously or to proceed today on the basis of the previously amended sum claimed in terms of the application (which had been

amended timeously) of £7,240. The Applicant's representative opted to proceed today.

8. The Applicant's representative addressed the application and answered some questions from the Legal Member. Reference was made to the updated Rent Statement lodged. He advised that his company had taken over management of the Property on behalf of the Applicant in September 2017. The Respondent had occupied the Property since 10 June 2015. Everything was fine until September 2019 when the rental payment was short by £100 and then no payments at all were made from October 2019 to date, such that the arrears are now £8,620. When the rent was short in September 2019, they contacted the Respondent and he indicated he was struggling financially. To try and assist, they offered him an alternative property which was cheaper but he refused, stating that he did not want to move. They also advised him to seek advice from advice organisations and the local authority. The Applicant's representative indicated, however, that the Respondent has just 'stuck his head in the sand' and seemed to think that this would just go away. The Respondent worked previously as a chef and they are aware that he has been in receipt of the housing costs element of Universal Credit for almost 18 months and has also been in receipt of Discretionary Housing Payments since June 2020. However, the Respondent has not passed on these payments to them. They have been in contact with Universal Credit to see if they could arrange for the housing element to be paid directly to them towards the rent but they cannot do this without the Respondent's cooperation. The Applicant's agent confirmed that they have not received any payments, either direct from the Respondent or on his behalf by way of benefits, etc towards the rent since the last payment referred to previously in October 2019. The Respondent has not made any contact with them recently. The Applicant has started proceedings for eviction on the basis of the rent arrears but, due to Coronavirus restrictions, a Tribunal application is not proceeding at the present time.

Findings in Fact

9. The Applicant is the owner and landlord of the Property.
10. The Respondent is the sole tenant of the Property by virtue of an assured/short assured tenancy commencing on 10 June 2015.
11. The rent in terms of the tenancy was originally £495 per calendar month, which was increased from September 2017 to £510 per calendar month.
12. Rental payments were made by Standing Order without difficulty until around September 2019 when the payment was short.
13. The last rental payment received was on 30 October 2019.
14. No further rental payments have been made by or on behalf of the Respondent.

15. The amount owing in rent arrears when this application was submitted to the Tribunal on 25 September 2020 was £5,710.
16. The rent arrears and amount sought as at 10 December 2020 was increased to £7,240.
17. Further arrears have accrued since and the amount currently owing by the Respondent is £8,260.
18. No explanation has been given for the non-payment of rent by the Respondent, nor attempts to resolve the issue.
19. The Respondent has not submitted any written representations, nor sought time to pay, in respect of this application. The Respondent did not attend the CMD.

Reasons for Decision

20. The Respondent did not submit any written representations to the Tribunal and did not attend the CMD, having been properly and timeously notified of same. The Legal Member had regard to the written communications received previously on the Respondent's behalf from CAB Inverness but noted that these did not contain representations as such or details of any defence to the action.
21. The Legal Member was further satisfied from the information contained in the application and supporting documentation, together with the oral submissions made by the Applicant's representative at the CMD that the balance of the sum claimed in unpaid rent in respect the tenancy (in terms of the amended application) of £7,240 is due and resting owing by the Respondent.
22. The Legal Member concluded that there being no information to the contrary from the Respondent that the matter did not require to go to an evidential hearing and that an order for payment in that sum could be made today.

Decision

23. The Legal Member accordingly determines that an order for payment by the Respondent of the sum of £7,240 should be made in favour of 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.



Nicola Weir
Legal Member/Chair

15 February 2021
Date