



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/CV/21/0068

Re: Property at 15 Brierfield Terrace, Aberdeen, AB16 5XT (“the Property”)

Parties:

Mr Geeon Tsang, Shandwick, Midmill, Kintore, Inverurie, Aberdeenshire, AB51 OXA (“the Applicant”)

Ms Mimi Mirela Hrisca, UNKNOWN UNKNOWN (“the Respondent”)

Tribunal Members:

Valerie Bremner (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 be made in favour of the Applicant and against the Respondent in the sum of £6204.43 together with interest at the rate of 8% per year from the date of the order until payment is made.

Background

1. This application is for a payment order in terms of Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016. The application was first lodged with the Tribunal on 11 January 2021. The application was accepted by the tribunal on 21 January 2021. The Application was lodged along with a related Application for Eviction proceedings (HPC.EV.21.0067).

Case Management Discussion

2. A Case management discussion was fixed for 9 April 2021 at 10 am for both applications. At the case management discussion the Applicant did not attend but was represented by Mr McKellar of Jackson Boyd Solicitors. There was no appearance by

or on behalf of the Respondent. Mr McKellar moved the Tribunal to proceed in her absence. The Tribunal noted that this application and the related eviction application had been the subject of service by advertisement in terms of Rule 6A of the Tribunal Rules of procedure. Attempts by Sheriff officers to serve the Applications and Tribunal papers on the Respondent at the property had been unsuccessful, Sheriff Officers reporting that neighbours had never heard of the Respondent and had reported that a young foreign male had lived at the property until a short time before their visit in February 2021. In these circumstances the Tribunal was satisfied that appropriate notice of the case management discussion had been given by advertisement and was prepared to proceed in the absence of the Respondent.

3. At the case management discussion the Tribunal had sight of the application, a paper apart, a tenancy agreement, a deposit protection information e mail, a rent arrears statement, an updated rent arrears statement, an email seeking to increase the sum being requested by way of a payment order, a statement from the Applicant and a series of emails sent to the Applicant by the letting agent on the subject of rent arrears. The Tribunal also had sight of an e mail from Sheriff officers dated 5 February 2021 indicating what they found when they attempted to serve the application and associated papers from the Tribunal at the property.

4. Mr McKellar requested that the Tribunal consider allowing the sum being requested by way of a payment order to be increased from the initial sum requested of £5101.20 to the sum of £6451.20. He said that this amended sum reflected the outstanding rent due up to April 2021. The request to amend the sum being sought had been sent to the Tribunal on 23 March 2021, more than 14 days before the date of the case management discussion. The Applicant's current whereabouts were unknown and the Tribunal papers had been served by way of service by advertisement. In the circumstances the Tribunal was satisfied that it was appropriate to allow an amendment of the sum being requested by way of a payment order in terms of the Tribunal rules of procedure. There was no means for the Applicant to serve notice of the amended sum on the Respondent and she had chosen not to respond to service by advertisement of the Application and supporting papers.

5. Mr McKellar advised the Tribunal that the Applicant had entered into a private residential tenancy with the Respondent at the property with effect from 23 April 2019 with a monthly rent of £450 payable. A deposit of one month's rent was paid and protected in an approved deposit scheme where it remained. A letting agent had dealt with the letting and management of the property on behalf of the Applicant.

6. In the course of dealing with rent arrears which started to accrue at the property in December 2019, the letting agent received emails from someone who claimed to be the Respondent's son indicating that the Respondent was not living at the property and had moved abroad. The Tribunal had sight of a written statement from the

Applicant explaining that from his own observations and information received from a neighbour and the letting agent instructed on his behalf it appeared that some time between April and October 2019 the Respondent had stopped occupying the property but had allowed an adult male, possibly her son to take occupation at the property without written permission of the Applicant.

7. This male had been observed by a neighbour to be living at the property around August 2020 and at various points up to and including March 2021 when he appeared to move out of the property taking items of furniture and belongings with him. A second adult male appeared to have moved into the property at some stage in 2020 but by 18th March 2021 the property appeared completely unoccupied. The Applicant went to the property on 23rd March 2021 as he had heard it was insecure and found that it had been vacated and that very little by way of belongings was left at the property other than items of small value.

8. E mail correspondence sent by the letting agent during the tenancy was answered from the email address given by the Respondent in the tenancy agreement but it was not always clear who was engaging with the letting agents, the tenant or her son or someone claiming to be her son.

9. In December 2019 the rent which had been paid each month since the start of the tenancy agreement was in credit in the sum of £8.80. For January 2020 only £290 was paid towards the rent and that was the last payment of rent made to the letting agents acting on behalf of the Applicant. Attempts by the letting agents to engage with the Respondent using the email address given on the tenancy agreement did meet with responses. The responses suggested that there were difficulties with employment and no eligibility to receive benefit and the rent simply could not be paid. As stated above it was not clear who was responding to these emails, whether it was the Respondent, her son, or a person she had permitted to occupy the property.

10. Mr McKellar requested a payment order in the sum of £6451.20. He indicated that this was the total sum of the ongoing arrears which had accrued up to and including the month of April 2021. At the stage that this application was considered the Tribunal had already issued an eviction order bringing the private residential tenancy to an end with effect from 9 April 2021. Mr McKellar then requested the Tribunal to deduct the sum of £246.77 from the total being requested to reflect the fact that rent was no longer due in terms of the agreement after 9 April 2021. This took the total sum to £6204.43. Interest was being requested on that outstanding sum at the rate of 8% per annum and Mr McKellar pointed to clause 8 of the tenancy which stated that interest on any late payments may be charged by the landlord at 8% per year from the date on which the rent is due until payment is made.

11. In seeking a payment order Mr McKellar indicated that clear efforts had been made to engage with the Respondent regarding the unpaid rent. While the balance of information available to the Applicant suggested that the Respondent had left the

property early on in the tenancy he submitted that the Respondent was still liable to the Applicant in respect of the unpaid rent. He pointed out that the Respondent was in breach of the tenancy agreement by leaving the property and no longer occupying it and allowing someone to occupy the property without the express permission of the Applicant. The Respondent could have requested to bring the agreement to an end but there had been a complete lack of communication and she had simply disappeared. Little was known of her financial circumstances he submitted but there was no suggestion that the rent arrears had accrued as a result of any delay or failure in the payment of a relevant benefit.

12. The Tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

13. The Tribunal accepted the information before it and felt it was appropriate to make a payment order in favour of the Applicant and against the Respondent in the sum of £6204.43 together with interest at the rate of 8% per annum from the date of the order until payment is made.

Findings in Fact

14. The applicant and the Respondent entered into a private residential tenancy at the property with effect from 23rd April 2019 with rent payable at the rate of £ 450 per month.

15. A deposit of £450 was paid by the Respondent at the start of the tenancy and this was placed within an approved tenancy deposit scheme where it remains.

16. A letting agent dealt with the tenancy at the property and the tenant, the Respondent signed the tenancy agreement on 19 April 2019.

17. No rent has been received for the let property since a payment made for January 2020.

18. When arrears of rent started to accrue at the property late in 2019 the letting agent instructed by the Applicant was advised that the tenant, the Respondent had ceased to occupy the property, had moved abroad and that a young man who may have been her son was living there.

19. Efforts by the letting agent instructed by the Applicant to communicate with the Respondent in relation to rent arrears which started to accrue in December 2019 met with email responses to the effect that the rent could not be paid as there were employment issues and the person responding was not eligible for benefits. It is not clear who was responding to these emails.

20. Rent arrears at the property up to 9 April 2021 amount to £6204.43.

21. The Respondent is in breach of the tenancy agreement having left the property sometime early in the tenancy and allowing at least one adult to occupy the property without the Applicant's written permission and without paying any rent.

22. The Respondent has not communicated with the letting agent instructed on behalf of the Applicant since early on in the tenancy at no time has requested to terminate the tenancy.

23. The sum of £6204.43 is lawfully due by the Respondent to the Applicant in respect of unpaid rent for the let property.

Reasons for Decision

24. The facts of this case was somewhat unusual in that it was clear from information received by the Applicant and accepted by the Tribunal that the tenant had ceased occupy the property early on in the tenancy. What happened thereafter was somewhat unclear but information made available to the Tribunal suggested that a young adult male, possibly the Respondent's son had taken occupation of the property and had later been joined by another adult male. They appeared to occupy the property if not continually until March 2021 at least on a regular basis. Their occupation was without permission of the landlord and no rent was paid at the property after a payment made for January 2020. It was understood that the Respondent may have left the country but no effort had been made by her to terminate the tenancy agreement which continued until 9 April 2021 and was brought to an end by the tribunal granting an order for eviction against the Respondent. Efforts to recover the rent were unsuccessful. Someone engaged with the letting agent by email explaining their financial circumstances but again it is not clear who that person was. The Tribunal accepted that the Respondent had an ongoing liability for rent as the agreement had continued despite the fact that she was no longer in occupation at the property. Given the efforts made to recover the rent and the failure of the Respondent to communicate with the Applicant it seemed reasonable to grant the payment order with contractual interest as set out in the tenancy agreement.

Decision

The Tribunal granted a payment order in favour of the Applicant and against the Respondent in the sum of £6204.43 together with interest at the rate of 8% per year from the date of the order until payment is made.

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.

Valerie Bremner

Legal Member/Chair

9.4.21
Date