



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/21/0256

Re: Property at 44 Bruntsfield Crescent, Dunbar, EH42 1QZ (“the Property”)

Parties:

Mr Gerard Bent, No Fixed Address, No Fixed Address (“the Applicant”)

Mr Anthony Kearney, Ms Elizabeth McAndrew also known as Donna McCafferty also known as Louise Hanscombe, 44 Bruntsfield Crescent, Dunbar, EH42 1QZ; 44 Bruntsfield Crescent, Dunbar, EH42 1QZ (“the Respondents”)

Tribunal Members:

Rory Cowan (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a Payment Order in the sum of £12,342.00 should be granted.

- Background

By application dated 2 February 2021 (the Application), the Applicant initially sought a Payment Order for £5,142.50 against the Respondents relative to rent arrears in relation to the Property. Various supporting documents were lodged including the following:

- 1) Copy lease;
- 2) Rent statement; and
- 3) Various letters issued to the Respondents about arrears.

A Case Management Discussion (CMD) was initially set for 6 May 2021, but following a request from the Respondents, that CMD was postponed and a new date for the CMD was fixed for 4 June 2021 to be heard by way of conference call. The

Respondents did not appear or were represented despite intimation of the CMD date to them. The Applicant appeared and represented himself. He indicated that arrears had increased and that he wished to seek to amend the Application to reflect the increased arrears under Rule 14A of the Tribunal's rules of procedure. As this had not been done prior to the CMD he sought a continuation of same for that to be done. The Tribunal agreed to this request. A further CMD was thereafter assigned for 12 August 2021 and the dates intimated to the Parties. The Applicant appeared with a new solicitor as his representative, a Miss Dalgleish. The Respondents again did not appear nor were they represented. Due to issues with the proposed application to amend Miss Dalgleish sought a short continuation of the CMD to allow an application under Rule 14A to be made to increase the sums sought from the Respondents. She also indicated that the Applicant would seek to further amend the Application to include another apparent alias of the second named Respondent a "Louise Hanscombe". As such, the Tribunal agreed to continue the CMD to 30 August 2021 to be heard by way of conference call.

At the CMD on 30 August 2021, Miss Dalgleish again appeared with the Applicant and the Respondents did not appear, nor were they represented despite intimation of the date upon them. Due to issues with intimation of the Applicant's application to in terms of Rule 14A to amend matters could not be dealt with at that CMD and a further CMD was set for 29 September 2021. By application under Rule 14A and dated 31 August 2021 the Applicant sought to amend the sum sought to £12,342.00 with interest at the rate of 4% per annum above the Bank of Scotland Base Rate (in line with clause "(Four)" of the lease as well as to add another alleged alias for the second named Respondent being "Louise Hanscombe". That application was received by the Tribunal and intimated to the Respondents. Along with that, the Applicant submitted an updated rent statement and copy newspaper articles confirming the second named Respondent's use of a further alias and regarding rent increases.

- The Case Management Discussion

At the CMD on 29 September 2021, Miss Dalgleish attended with the Applicant. Despite intimation of the date of this CMD and the amendment application, neither of the Respondents appeared or were represented. Nonetheless, the Tribunal was satisfied they were aware of the date and the requirement to attend and therefore decided to proceed in their absence. Miss Dalgleish made a motion to amend the Application to reflect the current arrears of £12,342.00 being the sums due as at 23 August 2021 as well as claiming interest at the rate of 4% per annum above the Base Rate of the Bank of Scotland. She also sought to amend the designation of the second named Respondent to include an additional alias of "Louise Hanscombe". Those motions were granted. Thereafter, Miss Dalgleish sought a Payment Order against the Respondents in the amend sum. That application was granted.

- Findings in Fact and Law

- 1) The Applicants and Respondents entered into a tenancy agreement relative to the Property.
- 2) In terms of the agreement between the Applicant and Respondents the rent payable from July 2020 was £1028.50 per month

- 3) As at 23 August 2021, the Respondents are in rent arrears to the extent of £12,342.00.
- 4) In terms of clause “(Four)” the Applicant is entitled to seek interest at the rate of 4% per annum above the Base Rate of the Bank of Scotland on any unpaid rent.

- Reasons for Decision

In terms of the agreement between the parties, from July 2020 the Respondents are due to pay rent relative to the Property at the rate of £1,028.50 per month. As at 23 August 2021 they are in arrears to the extent of £12,342.00. The Applicant is also entitled to seek contractual interest on any unpaid sums.

- Decision

A Payment Order in the sum of £12,342.00 should be granted with interest thereon at the rate of 4% per annum above the Bank of Scotland Base Rate.

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.

Rory Cowan

Legal Member/Chair

29 September 2021

Date