



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) 2016 Act

Chamber Ref: FTS/HPC/CV/21/0266

Re: Property at 90 Montrose Street, Brechin, Angus, DD9 7DF (“the Property”)

Parties:

Mr Alexander Collie, 5 Broomfield Way, Montrose, DD10 8UD (“the Applicant”)

Mr Paul Patterson Morrison, 90 Montrose Street, Brechin, Angus DD9 7DF, DD9 7DF (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Linda Reid (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. This was an application by the Applicant for civil proceedings in relation to an assured tenancy in terms of rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”), namely an order for payment of rent arrears. The tenancy in question was a Private Residential Tenancy of the Property by the Applicant to the Respondent commencing on 1 August 2019.
2. The application was dated 3 February 2021 and lodged with the Tribunal on or around that date. The application was accompanied by a rent statement setting out arrears of £3,140, being sums that had accumulated from irregular payments from 1 February to 30 June 2020 resulting in £1,180 of arrears plus a further for eight months of nil payments on the rent payment dates of 1 July 2020 to 1 February 2021. The lease for the tenancy accompanied the application and detailed a rental payment of £280 payable in advance on the 1st of each month.

The Hearing

3. On 10 June 2021 at 10:00, at a case management discussion ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, we were addressed by the Applicant's agent, Lori Beattie of Wardhaugh Property.
4. There was no appearance for the Respondent. Having adjourned briefly for the Applicant's agent to obtain confirmation from colleagues, we were informed that no contact had been received from the Respondent since 3 February 2021. We considered the evidence of intimation of the CMD and, having not commenced the CMD until 10:10, we were satisfied to consider the application in the Respondent's absence.
5. The Applicant's agent confirmed that the application was still insisted upon but further that she wished to amend. She stated that arrears had continued to accumulate and by 1 June 2021 stood at £4,260. (We note that this is over 15 months' rent in total.) Further, she said that an email, with a motion to amend, had been sent to the Tribunal on 13 May 2021 seeking amendment of the sum in the application to £3,980 (being the arrears at that date).
6. We had not received notification of this amendment request and, on considering the Tribunal's system further, the Clerk could not identify it. It had not been advanced to date and no evidence of intimation of the motion by the Applicant upon the Respondent was provided. The Applicant's agent thus moved to continue the application so an amendment could be advanced, and now to amend the sum to the current arrears of £4,260.
7. We considered the motion to continue and refused same. The application was conjoined with an application for eviction which we were satisfied to grant. It occurred to us that, given the absence of payments for eight months and an eviction likely to occur in due course, continuing this application for a few weeks for intimation of the application would not remove the potential requirement for a further application in due course if arrears continued to accumulate to the date of the eviction, or if there were further claims under the tenancy agreement on eviction. Continuation would, however, certainly create the need for further Tribunal time spent on this simple and undisputed application. Under Procedure Rule 2's "overriding objective" we are to deal "with the proceedings in a manner which is proportionate to the complexity of the issues", "us[e] the special expertise of the First-tier Tribunal effectively" and seek to avoid "delay, so far as compatible with the proper consideration of the issues". Following this guidance, we held that in the circumstances the proper consideration of the issue in this application is one of arrears to 1 February 2021. There is no need to avoid consideration of that issue at this time and no requirement to allow continuation and amendment to seek arrears to a further arbitrary (but not final) date.
8. Having refused the motion to continue, the Applicant's agent confirmed that the application was still insisted upon in the sum of £3,140 and, there being no

interest rate in the Tenancy Agreement, sought interest on the sum under Procedure Rule 41A at 8% per annum from the date of Decision as an appropriate rate. No motion seeking expenses was made.

Findings in Fact

9. On 31 July 2019, the Applicant let the Property to the Respondent by lease with a start date of 1 August 2019 under a Private Residential Tenancy (“the Tenancy”).
10. Under the Tenancy, in terms of clause 8, the Respondent was to make payment of £280 per month in rent to the Applicant in advance, being a payment by the 1st of each month to cover the month to follow.
11. As of 3 February 2021, there was unpaid rent of £3,410 being made up of unpaid rent accumulated from irregular payments from 1 February to 30 June 2020 totalling £1,180 and a further eight months of arrears (of £280 per month) for the rent payment dates 1 July 2020 to 1 February 2021.
12. On 3 February 2021, the Applicant raised proceedings against the Respondent for an order for payment of rent arrears of £3,410.
13. On 13 May 2021, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondent, providing the Respondent with sufficient notice of the CMD of 10 June 2021 and the details for dialling into the conference call.
14. The Respondent provided no evidence of payment of any part of the said unpaid rent of £3,410.

Reasons for Decision

15. The application was in terms of rule 111, being an order for civil proceedings in relation to a PRT. We were satisfied, on the basis of the application and supporting papers, that rent arrears of £3,410 were outstanding as of 3 February 2021.
16. As the application clearly set out the sums, we were satisfied that the necessary level of evidence for such civil proceedings had been provided. No dispute was stated by or on behalf of the Respondent. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal and we were satisfied to make a decision at the CMD to award the amended sum of £3,410 against the Respondent.
17. We were satisfied that it was appropriate to award interest from the date of Decision. There was no unanimity between us as to whether 4% or 8% was an appropriate rate, but Legal Member as Chairperson, opted to grant the Applicant’s motion for the higher figure.

18. We note that, having refused the motion to amend, the application was limited to the rent arrears due under the lease to 3 February 2021 and this Decision does not preclude any future application by the Applicant in regard to any further claim under the lease against the Respondent regarding any other potential breach of the lease or arrears for any later period.

Decision

19. In all the circumstances, we were satisfied to make the decision to grant an order against the Respondent for payment of £3,410 with interest at 8% per annum running from today's date.

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.

J. C

Legal Member/Chair

10 June 2021

Date