

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 (“2016 Act”)

Chamber Ref: FTS/HPC/CV/21/1829

Re: 24 Frederick Street, Downfield, Dundee, DD3 8RR
 (“the Property”)

Parties:

Mr George McGurk, Old Smithy, Newbigging Road, Tealing, Dundee, DD4 0QX
 (“the Applicant”)

Mr Alexander Mordente and Miss Linzi Cook, 24 Frederick Street, Downfield, Dundee, DD3 8RR
 (“the Respondents”)

Tribunal Members:

Pamela Woodman (Legal Member) and Jane Heppenstall (Ordinary Member)

Present:

The case management discussion in relation to case reference FTS/HPC/CV/21/1829 took place at 10am on Friday 5 November 2021 by teleconference call (“**the CMD**”). The Applicant was present at the CMD. The Respondents were not present nor represented at the CMD. The clerk to the Tribunal was Caitlin Munro. This case was conjoined with case reference FTS/HPC/EV/21/1828 and heard at the same time.

DECISION (in absence of the Respondents)

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

BACKGROUND

1. The Applicant made an application to the Tribunal under section 71(1) of the 2016 Act and in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended, (“**2017 Regulations**”). More

specifically, the application was made in terms of rule 111 (*Application for civil proceedings in relation to a private residential tenancy*) of the HPC Rules.

2. The order sought from the Tribunal was an order for payment against the Respondents for rent arrears and the cost of repairs to the main entrance door to the Property.
3. The application was dated 28 July 2021 and was accompanied by various documents.
4. The Tribunal was provided with a copy of the private residential tenancy agreement between the Applicant and the Respondents dated 17 December 2019 ("**Tenancy Agreement**").
5. Various requests for information and/or documentation were made by the Tribunal following receipt of the application. The Applicant provided further information and/or documentation to supplement his original application paperwork.
6. A notice of acceptance of the application was issued dated 23 September 2021 under rule 9 of the HPC Rules, which confirmed that the application paperwork had been received by the Tribunal between 29 July and 6 September 2021.
7. The Tribunal had received a copy of the two certificates of intimation issued by Steven Cameron (sheriff officer) of Stirling Park which confirmed that the letters with enclosures from the Tribunal dated 1 October 2021 had respectively been served on each of the two Respondents on 5 October 2021 by depositing the letter within the letterbox of the Property, having checked with a neighbour that they respectively still resided at the Property. This letter notified each Respondent of the date and time of the CMD, requested written representations by 22 October 2021 and enclosed a copy of the application.
8. The Tribunal was satisfied, on the balance of probabilities, that the Respondents had been provided with proper notification of the CMD and so it could proceed, notwithstanding their absence.
9. The Respondents had been invited to provide written representations by 22 October 2021 but had not done so. One of the Respondents had contacted the Tribunal's administration team by telephone on 4 November 2021 to ask if they were required to attend the CMD.
10. The Tribunal noted that the Applicant was the registered landlord of the Property.
11. The Tribunal also noted that the Applicant was not the registered proprietor of the Property (title number ANG53032), the registered proprietor being G McGurk Joinery Limited.
12. However, the Applicant confirmed that he was the sole director of G McGurk Joinery Limited, which was confirmed by the Tribunal to be correct based on information publicly available from Companies House. The Tribunal also noted that the information from Companies House indicated that the Applicant was also

the only person noted as a person with significant control of the company. During the CMD, the Applicant (in his capacity as sole director of the company) confirmed, on behalf of the company, that the Applicant (in his personal capacity) was authorised to register as the landlord of the Property, grant the tenancy agreement and take the current proceedings.

13. Within the application paperwork, the Applicant had provided a schedule of rental payments (“**Rental Payments Schedule**”) which showed that, as at 17 August 2021, the amount of rent outstanding from the Respondents was £8,025.

14. This decision arises out of the CMD.

PROCEEDINGS, NAMELY THE CMD

15. The Applicant confirmed that he had not received payment from the Respondents of any of the amounts outstanding as set out in the Rental Payments Schedule and that further rental payments had since also fallen due on 17 September 2021 and 17 October 2021 (which also remained unpaid).

16. The Applicant confirmed that he had received a deposit from the Respondents in the amount of £850 and it was still held in an approved tenancy deposit scheme, he believed with My Deposit Scotland.

17. In relation to the broken glass in the entrance door, the Applicant explained that it was not possible to replace the glass on its own because there is a moulded panel that fits into the door frame.

18. The Applicant acknowledged that he had not yet incurred costs in relation to repairing the entrance door at the date of the CMD and so did not have details of the actual cost of the works.

FINDING IN FACT

19. In terms of the Tenancy Agreement, the Respondents were obliged to pay rent at the rate of £850 per calendar month in advance on or before 17 December 2019 and on or before the same date of each calendar month thereafter.

20. No costs in relation to repairing the entrance door to the Property had been incurred by the Applicant as at the date of the CMD.

REASON FOR DECISION

21. In the absence of any written representations or attendance at the CMD by the Respondents, the Tribunal had no information to suggest that the arrears of rent detailed in the Rental Payments Schedule were not due and payable.

22. The Tribunal was satisfied, on the balance of probabilities, that the Respondents were in arrears of rent and that the amount outstanding as at 17 August 2021 was £8,025 and that that amount was still outstanding as at the date of the CMD.

23. In relation to the entrance door to the Property, the Tribunal noted that any claim could be based on an estimate only at this stage, rather than on a cost actually incurred, and so it was not willing to grant an order for payment on that basis. The Tribunal also noted that the amount of the tenancy deposit exceeded the amount estimated for the cost of the repair to the entrance door.

DECISION

24. The Tribunal decided that an order be granted in favour of the Applicant against the Respondents (jointly and severally) for payment of the sum of £8,025 (eight thousand and twenty five pounds sterling) in respect of outstanding rent (up to and including 17 August 2021).

25. The order referred to in the preceding paragraph was intimated orally to the Applicant during the CMD.

Right of Appeal

In terms of Section 46 of the Tribunals (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.

Pamela Woodman

05 November 2021

Chair

Date