



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) Act 2016 (“the Act”)

Chamber Ref: FTS/HPC/CV/21/2195

Re: Property at 51 Langton Avenue, East Calder, EH53 0DW (“the Property”)

Parties:

Mr Gary Brown, 38 Woodhead Drive, Bothwell, Glasgow, G71 8AF (“the Applicant”)

Ms Heather McLean, 51 Langton Avenue, East Calder, EH53 0DW (“the Respondent”)

Tribunal Members:

Steven Quither (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent is to pay to the Applicant the sum of EIGHT THOUSAND NINE HUNDRED AND FIFTY POUNDS ONLY (£8950) STERLING.

1. BACKGROUND

This is an application for payment of rent arrears arising out of a Tenancy Agreement between the parties commencing 1 October 2018 with an “Unconfirmed” expiry date, in respect of which the Applicant states rent arrears have accrued in the sum of £8950, up to 30 November 2021. The actual agreement was headed “Tenancy Agreement” and reference was made therein to it being a Short Assured Tenancy, as opposed to a Private Residential Tenancy under the Act, but it contained the “four cardinal elements” of a lease, namely parties, subjects, rent and duration (albeit “Unconfirmed”), was signed by the parties, commenced after the Act came into force and, furthermore, complied with the definition of “Private Residential Tenancy” as set out in s1 of the Act. In addition, the Respondent had taken up occupancy based on it. Accordingly, the Tribunal considered it and the parties’ actions consistent with

it reflected the intentions of the parties as to establishing a Private Residential Tenancy.

An associated case, under Tribunal reference EV/21/2194 to bring the tenancy to an end on account of the unpaid rent was considered together with this application.

Following upon sundry procedure, a Case Management Discussion ("CMD") was fixed for 23 December 2021.

At all times the Tribunal was aware that in relation to the eviction case, it required to be satisfied not only that the formal requirements in relation to same had been complied with but also that it was reasonable to make the order for repossession.

2. CASE MANAGEMENT DISCUSSION

A CMD took place by teleconference on 23 December 2021, when the Applicant was represented by his Solicitors, Claudia Hoey and Emily Campbell, from Jones Whyte, Solicitors, Glasgow ("the Agents"). The Respondent was neither present nor represented.

Confirmation was available to the Tribunal of sheriff officer intimation of today's CMD on the Respondent by letter box and first class mail delivery on 24 November 2021. Accordingly, notwithstanding the Respondent's absence, the Tribunal considered the CMD could proceed. Clearly, however, since the Respondent was not present nor represented, no facts relating to her ability to ensure payment of the rent or background in which the rent fell into arrears were capable of agreement.

Since the question of the unpaid rent was at the heart of and formed the basis for both cases, the Tribunal considered the only issue to be resolved was the amount of and reason behind any arrears of rent accruing, after a period of a couple of years without any apparent issue.

The Agents confirmed that further arrears had accrued since commencement of these proceedings and accordingly the sum sought was now £8950, per up to date rent statement to 30 November 2021. The Tribunal formally allowed amendment of the sum claimed to this amount. The Agents further advised that letters had been sent to the Respondent on 2 and 24 June 2021 providing her with advice and information about outstanding matters and possible routes to resolution, which letters were produced at the CMD and which the Tribunal regarded, after consideration, sufficiently satisfied and fulfilled pre-action requirements. They further advised that neither they nor the Applicant had received any response to same and accordingly they had no information to provide about any reasons behind the rent arrears which had accrued.

In the circumstances of such a substantial amount of arrears having accrued, the Agents asked the Tribunal to make the order for payment sought.

Obviously, in view of the Respondent's failure to attend, there was no challenge to any of what was stated on behalf of the Applicant.

3. FINDINGS IN FACT

The Respondent is due and liable for arrears of rent up to 30 November 2021 in the sum of £8950 arising out of a Private Residential Tenancy between the

parties commencing 1 October 2018, in respect of which the Respondent agreed to pay rent of £600 per month.

4. REASONS FOR DECISION

The Tribunal was prepared to accept the position as stated on behalf of the Applicant regarding accrual of rent arrears, there being no contrary position placed before it. Accordingly, the Respondent was due and liable for arrears of rent in the sum of £8950 up till 30 November 2021 and it was just to grant the order for payment in that amount.

5. DECISION

To grant the order for payment sought by the Applicant in the sum of £8950.

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.



SR QUITHER

Legal Member/Chair

23 DECEMBER 2021

Date