



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

Chamber Ref: FTS/HPC/CV/21/2620

Re: Property at 1/2, 17 Brachelston Street, Greenock, PA16 9AE (“the Property”)

Parties:

GFS Properties, 1 Campbell Street, Greenock, PA16 8AN (“the Applicant”)

Mr Albert Wijngaards, 1/2, 17 Brachelston Street, Greenock, PA16 9AE (“the Respondent”)

Tribunal Members:

Anne Mathie (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment in the sum of three thousand one hundred pounds (£3100) plus interest at the rate of four per cent (4%) per annum from the date of the decision of the First Tier Tribunal to grant the order, being 21 January 2022, until payment be granted against the Respondent

Background

1. An application was submitted dated 22 October 2021 in terms of Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Chamber Rules”) being an application for civil proceedings in relation to a private residential tenancy. The Applicant sought an order for £3100 rent arrears “or such other sum as is due at the date of any hearing to follow hereon.” The Applicant also sought interest at 4% per annum and expenses if deemed appropriate.
2. Along with the application was lodged the following papers:
 - Copy Private Residential Tenancy Agreement dated 1 March 2018

- Rent statement as at 19 October 2021
- Copy letter to tenant dated 1 October 2021

3. The Tribunal wrote to the Applicant's representative on 17 November querying ownership of the Property and asking for further information. The Applicant's representative replied with this information by email dated 18 November 2021.

4. The application was accepted and assigned to a case management discussion. Details of the application and the case management discussion were served on the Respondent by Sheriff Officers on 17 December 2021. The Respondent was advised that he should submit written representations by 6 January 2022. He was also advised:

"The tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision on the application which may involve making or refusing a payment order. If you do not take part in the case management discussion, this will not stop a decision or order being made by the tribunal if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair."

5. The Applicant's representative emailed the Tribunal on 22 December 2021 in the following terms:

"I ...attach an updated rent statement showing current balance due of £3720. Could you please treat this email as a request to increase the sum sued for to reflect the current balance".

A copy of this email and attachment was sent by the Tribunal, as is their practice, to the Respondent by first class mail.

6. The Applicant's representative emailed the Tribunal again on 20 January 2022 with an up-to-date rent statement showing arrears of £4030.

7. No written representations were received from the Respondent.

The Case Management Discussion

8. The case management discussion took place today by teleconference. The Applicant was represented by Kenneth Caldwell, Partner, Patton and Prentice LLP. The Respondent did not attend.

9. As a preliminary issue the Tribunal asked whether the terms of the email of 22 December had been intimated on the Respondent. Rule 14A of the Chamber Rules states:

"Request to amend the application in respect of matters other than new issues

...where a new issue is not raised, a party may request to amend the application, including the sum claimed, by intimating the amendment to any

other party and the First-tier Tribunal at least 14 days prior to a case management discussion or hearing.”

The Applicant's representative confirmed he had not intimated the amendment request on the Respondent and had had no issues with this in the past. He assumed the Tribunal would cross it over to the other party. In respect of the email of 20 January 2022, the Applicant's representative advised that he merely wanted the Respondent to get an up-to-date figure of what they were due.

In terms of the application, the Applicant's representative advised that a Private Residential Tenancy was entered into between the parties from 1 March 2018. Significant arrears had accrued. A letter dated 1 November 2021 was served on the Respondent by Sheriff Officers including a Notice to Leave which didn't become active until 2 April 2022. The protocol in respect of rent arrears had been followed and the Respondent had been given guidance notes and information about the availability of advice. There had been no response at all from the Respondent. There are now 12 months rent outstanding. He understood the Respondent to be Dutch and in employment locally with an agency who provide an international call service for IBM. Mr Medinelli had repeatedly tried phoning, emailing and texting to no avail. He understands the Property to still be occupied. The lights are on. The Applicant's position was that the Respondent was taking advantage of the increased protection provided during the pandemic. The Applicant did not insist on expenses but was seeking 4% interest and the sum of £3720 rent arrears failing which the sum of £3100.

Findings in Fact

- The parties entered into a Private Residential Tenancy Agreement with effect from 1 March 2018.
- Under the terms of the tenancy agreement, rent was due to be paid at the sum of £310 per calendar month.
- At the date of the application £3100 rent was outstanding.

Reasons for Decision

The Tribunal took into account all the papers before it and the submissions from the Applicant's representative. There was nothing before the Tribunal challenging this evidence. The Tribunal was satisfied that it had enough information to make a decision and that the procedure had been fair. However, the Tribunal was not satisfied that the amendment request dated 22 December had been intimated to the Respondent and did not consider the requirements of Chamber Rule 14A had been met.

Decision

The Tribunal decided to grant a payment order in the sum of £3100 in respect of rent arrears with interest at the rate of 4% per annum from the date of the decision until payment under section 16 of the Housing (Scotland) Act 2014

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.

A Mathie

21 January 2022

Legal Member/Chair

Date