



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.

Chamber Ref: FTS/HPC/CV/22/0940

Re: Property at 148A High Street, Irvine, KA12 8AH (“the Property”)

Parties:

McMail Properties, 17 - 19 Hill Street, Kilmarnock, KA3 1HA (“the Applicant”)

Ms Emma Hay, 148A High Street, Irvine, KA12 8AH (“the Respondent”)

Tribunal Members:

David Preston (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondent)

The tribunal determined to make an order for payment by the respondent to the applicants of the sum of FIVE THOUSAND THREE HUNDRED AND TWENTY POUNDS (£5320) being arrears of rent under the Tenancy Agreement between the parties.

Background:

1. An application under Rule 111 of the First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”) was made on 1 April 2022. The application sought an order for payment of arrears of rent amounting to £3600 as at that date.
2. In support of the application the applicants submitted: Private Residential Tenancy Agreement dated 20 March 2021; landlord’s evidence including tenants’ rights information and correspondence to tenant regarding assistance with arrears of rent; and rent statement.
3. By Decision dated 19 May 2022 a Legal Member of HPC having delegated power for the purpose, referred the application under Rule 9 of the Regulations to the tribunal. A letter of Intimation with Notice of the Case Management Discussion to be held on 3 August 2022 by telephone together with the application and case

papers were served on the tenant by Sheriff Officers on 24 June 2022. The tribunal was provided with a copy of the Sheriff Officer's Certificate of Intimation thereof.

4. On 19 July 2022 the applicants submitted an email from the applicants confirming that no further rent had been paid and requesting that the additional arrears should be added to the outstanding rent in a total amount of £5320.
5. On 3 August 2022 the CMD was convened by telephone. Mr McMail, a partner of the firm of McMail Properties attended along with his personal assistant, Ms Ruth Rayner. There was no appearance by or on behalf of the respondent. The tribunal was provided with a copy Certificate of Intimation of the application and supporting papers served on the respondent on 24 June 2022
6. The tribunal was satisfied: that all relevant documents and intimation of today's hearing had been duly served on the respondent; that the requirements of Rule 24 had been complied with; and that the respondent had voluntarily waived her right to be present or represented at the CMD. The start of the CMD was delayed until 10:10 with no appearance by her or on her behalf and she did not attempt to join the conference call during the progress of the discussion. It was accordingly content to proceed in the absence of the respondent.

Case Management Discussion

7. Mr McMail confirmed that no rent had been received from the respondent since April 2021 and that the arrears now amounted to £5320. He advised that, notwithstanding terms of the tenancy agreement that the rent be partly paid direct by the local authority through housing benefit, the respondent had arranged for the housing benefit to be paid to her direct which was to be passed on to the applicants, which she did in part until the payments stopped in August 2021. Despite inquiries of the local authority and subsequently the benefits agency, the applicants had been unable to obtain payment or information regarding the benefit. In August 2021 the respondent indicated that she intended to voluntarily leave the property on 27 August 2021. She refused access to the applicants to inspect the property and failed to vacate as indicated. She asked the applicants to provide her with a letter of eviction which they had been unable to do without obtaining an eviction order.
8. Mr McMail advised that, so far as he was aware the respondent remained in occupation of the property. They had been unable to obtain access for inspection purposes in August and since then they have enquired of neighbours who have indicated that property remains occupied, whether by the tenant or others. The following communications from the respondent had been text messages asking about the progress of the eviction application with no mention of the rent or the arrears.
9. The tribunal noted that the tenant had been able to recover her deposit from Safe Deposits Scotland on 21 September 2021 Mr McMail advised that this had happened due to an administrative error on the part of the applicants who had failed to respond to Safe Deposits Scotland before they had released the funds.

10. The tribunal was satisfied that the applicant had provided the respondent with all information and advice as required and that the respondent had received all relevant paperwork and had voluntarily waived her right to appear at the tribunal.

Reasons for Decision

11. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 states that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision. The tribunal decided that, on the basis of the information presented to it, to determine the application at the CMD.

12. The tribunal accepted the information in the file and as provided by the applicant through Mr McMail and determined to issue the order for payment as requested in the application, as amended.

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.

David Preston

3 August 2022