



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/22/1384

Re: Property at 3 Vanguard Street, Clydebank, West Dunbartonshire, G81 2NB (“the Property”)

Parties:

McPhate Properties Limited, 64 Queen Victoria Drive, Glasgow, G14 9DJ (“the Applicant”)

Mr Darren Dolan, Ms Shannon Reid, Mrs Isabella Cameron Reid, 43 Kestrel Way, Perth, PH1 5FL; Unknown, Unknown; 43 Kestrel Way, Perth, PH1 5FL (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to an order for payment from the Respondents for £4566.88 (FOUR THOUSAND FIVE HUNDRED AND SIXTY SIX POUNDS AND EIGHTY EIGHT PENCE)

1. An application was received by the Housing and Property Chamber dated 11th May 2022. The application was submitted under Rule 111 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on the Respondent not maintaining rent payments and damage to the Property.
2. On 23rd July 2022 all parties were written to with the date for the Case Management Discussion (“CMD”) of 26th August 2022 by teleconferencing. This was postponed due to unsuccessful service upon the Third Named Respondent. A new CMD date was set for 3rd November 2022 at 10am. Service

by Advertisement was undertaken upon all the Respondents from 23rd September 2022.

3. A CMD was held 3rd November 2022 at 10am by teleconferencing. The Applicant was represented by Mr Russell McPhate, solicitor, Morgans. The First Named Respondent, Mr Darren Dolan, was present and represented himself and the Second Named Respondent, Ms Shannon Reid. The Third Named Respondent, Mrs Isabella Cameron Reid, was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondents did not make representations in advance of the hearing. Mr McPhate told the Tribunal that the Applicant was still seeking the Order as per the application. The Tribunal confirmed with Mr McPhate that he was seeking arrears of £3777.88 and £789 for the damage to the Property. The application details damage of £1264 but this is less the deposit of £475 which amounts in £789 outstanding. Mr McPhate confirmed that the deposit has been returned to the Applicant. In terms of the rent arrears he did not dispute the full amount. He said that his income had been reduced, they were paying back a Scottish Hardship Loan and were frustrated with the Applicant's letting agents' management of the Property. Mr Dolan accepted that there would be some rent arrears due but not all of it. Mr Dolan and Ms Reid had been furloughed from December 2020 to March 2021. Mr Dolan confirmed with the Tribunal that both he and Ms Reid had been paid their wages at 80% of the full value. The Tribunal had queried why the rent was not paid but Mr Dolan was not able to explain that in full. The Tribunal noted that this was a key part of any defence as to why he should not have to pay the full amount of the rent arrears. Mr Dolan told the Tribunal that he did not dispute that he owed the claimed amount for the changes to the lock (£100), removal and disposal of rubbish from the Property and garden (£120) and works undertaken to the garden (£160). He disputed the other items namely the Property clean (£204), damage to carpets (£500) and the marked walls that were beyond wear and tear (£180). The Tribunal asked Mr McPhate to clarify exactly where the deposit was allocated to as it was not clear if it was the disputed items or not. The Tribunal continued to a hearing for Mr Dolan to present evidence as to why the full amount sought was not due to the Applicant. The Tribunal set out questions that needed to be answered at the hearing and issued a direction for further evidence from both parties. The hearing date was set for 11th January 2023. The parties were clearly told that they must comply with the Direction. It was explained to the Mr Dolan that he needed to do this to show that he had a defence to not being required to pay all of the amount sought Respondent.
4. On 3rd January Mr Dolan sent in copies of text messages which largely related to other tenancy issues.
5. On 11th January 2023 at 9.37am Mr Dolan emailed the Housing and Property chamber advising that he had been up unwell through the night. He asked for a postponement. The Tribunal considered it in the interests of justice to allow a postponement on this occasion. On granting the postponement the Tribunal stipulated that any further postponements should be substantiated such as with a soul and conscious letter from a doctor.

6. On 17th February 2023 the Respondents were written to with the date for the hearing date of 22nd March 2023 at 10am by teleconferencing. The First Named Respondent was written to by Recorded Delivery post. This was signed for by the First Named Respondent on 18th February 2022. Service by Advertisement was undertaken upon the Second and Third Named Respondents from 17th February 2023.
7. On 13th March 2023, Mr McPhate lodged a response to the Direction insofar was relevant to the Applicant.
8. On 21st March 2023, Mr Dolan emailed the Housing and Property Chamber to say that he would not be attending due to illness but did not make a request to postpone.

The hearing

9. A hearing was held 22nd March 2023 at 10am by teleconferencing. The Applicant was represented by Mr Russell McPhate, solicitor, Morgans. The Respondents were not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondents did not make representations in advance of the hearing or make a response to the direction issued.
10. The Tribunal noted that in the email that Mr Dolan sent on 21st March 2023 he did not reference any further defence. The Tribunal had specifically told him that this would be necessary in advance of this hearing. The Tribunal considered it reasonable, on balance, to conclude that the Respondents did not have a defence to lodge.
11. The Tribunal considered it appropriate to grant an order for payment.

Findings and reason for decision

12. A Private Rented Tenancy Agreement commenced 8th July 2019. The tenancy has now ended.
13. The Respondents persistently failed to pay their rent charge of £475 per month. The rent payments were due to be paid on 8th day of each month. Arrears accrued amounting to £3777.88.
14. The First and Second Named Respondents were the tenants. The Third Named Respondent was the guarantor to the lease.
15. Damage was caused to the Property amounting to £1264. The deposit of £475 was returned to the Applicant which reduced the amount due for the damages to £789.
16. At the CMD on 3rd November 2022, Mr Dolan admitted that some of the amount claimed was due. He was not able to elaborate fully as to why he believed that some was not due.

17. The Respondents did not respond to a direction issued by the Tribunal asking for further evidence or the questions stipulated in the CMD note dated 3rd November 2023.

18. The arrears sought total £4566.88.

Decision

19. The Tribunal found that the Applicant was entitled to be granted an order for payment amounting to £4566.88.

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.

G. Miller

22nd March 2023

Legal Member/Chair

Date