



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 70(1) of the Private Housing Tenancies (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/22/2262

Re: Property at 86 Middlebank Street, Rosyth, Fife, KY11 2NJ (“the Property”)

Parties:

Mr Anthony Wreford Bennell, Mrs Christine Margaret Bennell, 13A South Dewar Street, Dunfermline, Fife, KY12 8AR (“the Applicant”)

Miss Nicola O’Neil, 49 Wemyss Street, Rosyth, Fife, KY11 2JT (“the Respondent”)

Tribunal Members:

Ruth O’Hare (Legal Member) and Elaine Munroe (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make a payment order in the sum of Six thousand two hundred and fifty pounds (£6250) Sterling

Background

- 1 By application to the Tribunal dated 8 July 2022 the Applicant sought an payment order against the Respondent in respect of unpaid rent arrears. In support of the application the Applicant provided the following documentation:-
- (i) Tenancy Agreement between the parties dated 12 November 2008;
 - (ii) Rent Statement;
 - (iii) Copy order by the First-tier Tribunal Housing and Property Chamber under reference FTS.HPC.EV.19.1625; and

- (iv) Copy order by the First-tier Tribunal Housing and Property Chamber under reference FTS.HPC.CV.18.0983.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for the 23rd November 2022 to take place by teleconference. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondent by Sheriff Officers.

Case Management Discussion

- 3 The Case Management Discussion took place by teleconference on 23 November 2022. The Applicant was represented by Mr Russell McPhate of Morgans Solicitors. The Respondent was also present.
- 4 The Tribunal heard from the parties. The Respondent advised that she had obtained a new tenancy in December 2018. She therefore disputed that she was liable for any rent payable from that date. She did have some items remaining in the property however these had been removed in early 2019. Mr McPhate advised that a colleague of his had been in touch with the Respondent in March 2019 and had advised that the Respondent would require to return the keys for the property and signed a termination notice. An appointment had been arranged in April 2019. However the Respondent had not attended and no formal termination had been submitted. The Applicants had therefore raised an application for an eviction order with the Tribunal and this had been granted in August 2019. The Respondent advised that she believed she had a copy of the receipt confirming when the keys had been returned and she would hope to submit that to support her position.
- 5 Having heard from the parties the Tribunal identified the following issues to be resolved:-
- (i) On what date did the tenancy between the parties terminate?
 - (ii) What level of arrears falls due to be paid by the Respondent?
- 6 The Tribunal therefore determined to fix a hearing. A Direction was issued to parties requiring them to submit any further documentation and a list of witnesses no later than 23 December 2022.
- 7 On 16 December 2022 the Applicant's representative submitted, via email, an inventory of productions and list of witnesses. The productions consisted of a photocopy receipt signed by both a representative of the Applicant and the Respondent confirming that the keys for the property had been returned on 2 September 2019. Nothing was received from the Respondent.

The Hearing

- 8 The Hearing took place on 24 January 2023. The Applicants were represented by Mr Russell McPhate. The Respondent was not in attendance. The Tribunal allowed a short period of ten minutes to allow her to join the conference call. Thereafter, having noted that she had been provided with details of the Hearing, including the instructions for joining the conference call, the Tribunal determined to proceed in her absence.
- 9 The Tribunal heard submissions from Mr McPhate on behalf of the Applicants. He confirmed that the Applicants sought an order in the sum of £6250. He made reference to the productions lodged, which confirmed that the keys for the property had been returned on 2 September 2019. However the Applicants had restricted their claim to those arrears due as at 29th August 2019. The Tribunal subsequently adjourned the Hearing before concluding that it had sufficient information upon which to make a determination of the application.

Findings in Fact and Law

- 10 The parties entered into a Private Residential Tenancy Agreement which commenced on 12th November 2008.
- 11 In terms of the said Tenancy Agreement the Respondent agreed to pay rent at the rate of £450 per month. The rent was subsequently increased to £500 which took effect on 15 November 2010.
- 12 The tenancy between the parties terminated on 23 September 2019.
- 13 As at 29th August 2019 arrears in the sum of £15,170.32 were outstanding.
- 14 The Applicants obtained an order for payment of rent arrears in the sum of £8,920.32 from the Tribunal on 20th July 2018 under reference FTS/HPC/CV/18/0983 leaving a balance of £6250.
- 15 Despite repeated requests the Respondent has refused or delayed in making payment of the sum due.
- 16 The Respondent is therefore liable to make payment to the Applicants in the sum of £6250.

Reasons for Decision

- 17 The Tribunal was satisfied that it had sufficient information upon which to make a decision. The Respondent had participated in the Case Management Discussion and had been given the opportunity to participate in the Hearing but had chosen not to do so.

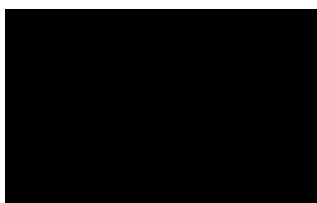
- 18 Based on its findings in fact the Tribunal accepted that the Respondent was liable under the terms of the tenancy agreement to make payment of rent at the rate of £450 per month, subsequently increased to £500 per month, and had failed to do so, resulting in the arrears accruing. The Tribunal further accepted that the keys for the property had been returned on 2 September 2019, as evidenced by the document produced by the Applicants. There was nothing before the Tribunal to contradict the position put forward by the Applicant's representative at the Hearing, nor anything to suggest that the tenancy had terminated in advance of that date.
- 19 The Tribunal therefore determined to make an order in the sum of £6250 against the Respondent. The decision of the Tribunal was unanimous.

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.

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Legal Member/Chair

24 January 2023

Date