



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/22/2669

Re: Property at 22 Ninian Place, Aberdeen, AB12 4QW (“the Property”)

Parties:

Mrs Susan Barr, Ardmyle, Tough, Alford, Aberdeenshire, AB33 8DN (“the Applicant”)

Mr Shaun McEntee, Unknown, Unknown (“the Respondent”)

Tribunal Member: Shirley Evans (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment against the Respondent in favour of the Applicant in the sum of NINE THOUSAND AND FORTY-TWO POUNDS AND FORTY- ONE PENCE (£9042.41) STERLING with interest at 4% per annum from the date of decision until payment. The order for payment will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.

Background

1. This is an application dated 3 August 2022 for an order for payment of rent arrears under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
2. The application was accompanied by a rent statement showing arrears to 22 July 2022 of £4261.55 and a copy of the Private Residential Tenancy between the parties dated 22 October 2021.

3. On 20 November 2022 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 20 December 2022. The Tribunal also advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 26 January 2023. This paperwork was served on the Respondent by Sheriff Officers on 5 December 2022 and the Executions of Service was received by the Tribunal administration.
4. The Tribunal proceeded with a CMD on 25 January 2023 by way of teleconference. Miss Mullen from T C Young, solicitors appeared for the Respondent. There was no appearance by the Respondent. Miss Mullen explained that on 11 January 2023 her client discovered that the Respondent had vacated the Property. The Applicant took possession of the Property on 11 January 2023. She moved for the CMD to be continued as there was a concern that the Respondent was not aware of the CMD and un dertiik to try to trace his whereabouts.
5. On 20 February 2023 the Applicant's solicitor emailed the Tribunal to advise that Sheriff officers could not trace the Respondent to a forwarding address and enclosed a copy negative trace report. They requested service by advertisement be made on the Respondent. Notification of the continued CMD of 11 April 2023 was accordingly served on the Respondent by way of service by advertisement in terms of Rule 6A of the Regulations.
6. On 20 March 2023 the Applicant's solicitor requested that the application be amended in relation to the sum claimed from £4261.55 to £9,042.41 in terms of Rule 14A of the Regulations. They attached a rent statement and a letter addressed to the Respondent by way of intimation of their request. They requested that the Tribunal attempt service of the application to increase the sum by way of online advertisement.
7. The Tribunal proceeded with a CMD on 11 April 2023 by way of teleconference. Miss Donnelly from TC Young, solicitors appeared on behalf of the Applicant. There was no appearance by or on behalf of the Respondent despite the teleconference starting 5 minutes late to allow the Respondent plenty of time to join. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in his absence.
8. The Tribunal had before it a Private Residential Tenancy Agreement dated 22 October 2021 and a rent statement to 11 January 2023. The Tribunal considered these documents.

9. Miss Donnelly asked the Tribunal to grant an Order for payment in the increased sum of £9042.41 for unpaid rent to the date of termination of the tenancy of 11 January 2023. She explained they had tried to trace the Respondent, but this had been unsuccessful. They had had no contact with the Respondent and no payments had been made. She further requested that the Tribunal award interest on any payment order granted in terms of Rule 41A of the Regulations.

Findings In Fact

10. The Applicant and the Respondent agreed by way of a Private Residential Tenancy Agreement dated 22 October 2021 in relation to the Property that the Respondent would pay the Applicant a monthly rent of £850.
11. The Respondent fell into arrears of rent. The tenancy agreement terminated on 11 January 2023. Arrears were £9042.41 as at the date of termination.

Reasons for Decision

12. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the oral submissions made by Miss Donnelly on behalf of the Applicant.
13. The Tribunal noted the rent statement lodged which set out how the arrears had arisen and showed the total arrears to 11 January 2023 as being £9042.41. The Applicant had produced evidence of persistent non-payment of rent with reference to the rent statement. The Applicant had taken reasonable steps to trace the Respondent's present whereabouts but had been unable to do so. The Respondent had an obligation in terms of the tenancy agreement to pay rent of £850 but had failed to do so. The Tribunal was satisfied on the basis of the documents, together with Miss Donnelly's oral submissions that the order for payment in favour of the Applicant be granted. The Tribunal was also satisfied that interest at the rate of 4% per annum be awarded in terms of Rule 41A of the Regulations.

Decision

14. The Tribunal granted an order for payment of £ 9042.41 with interest at 4% per annum from the date of decision until payment.

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.



Shirley Evans
Legal Member

11 April 2023
Date