



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/23/0845

Re: Property at 45 Kerr Crescent, Hamilton, ML3 8JT (“the Property”)

Parties:

Mr Donald Mackay, 52 Quarry Street, Hamilton, ML3 7AN (“the Applicant”)

Mr John Lavery, 45 Kerr Crescent, Hamilton, ML3 8JT (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent should pay to the Applicant the sum of Two Thousand Eight Hundred and Eighty Pounds Only (£2880).

Background

1.This is an application for a payment order in terms of Rule 111 of the Tribunal Rules of procedure and was first lodged with the Tribunal on 16th March 2023 and accepted by the Tribunal on 28th April 2023.A case management discussion was set down to take place by teleconference on 23rd June 2023 at 10am.

The Case Management Discussion

2.At the case management discussion on 23rd June 2023 the Applicant attended and represented himself and there was no appearance by or on behalf of the Respondent. The Tribunal Legal Member noted that the Application and supporting papers had been served on the Respondent by Sheriff Officers putting these through the letterbox at the property. The Tribunal Legal Member was satisfied that the Respondent had

received fair notice of the application and case management discussion and that the Tribunal could proceed in his absence.

3. The tribunal member had sight of the application, a tenancy agreement, a number of landlord rent statements, a rent increase e mail and a statement of the rent account showing accrued rent arrears.

4. The parties entered into a private residential tenancy at the property, a two-bedroom ground floor flat, with effect from 15th of November 2018. The initial monthly rent was £325 per month. The Respondent is the only tenant named on the lease although the Applicant understands that his partner may live at the address too.

5. A Letting Agent deals with the tenancy on behalf of the Applicant. On 10th January 2019 a member of staff from the Letting Agent emailed the Respondent indicating that the rent would be increased with effect from the 10th of March 2019 to £360 per month.

6. From the statement of account in relation to the rent lodged by the Applicant it appeared that rent due in terms of the tenancy agreement had not been paid in July, September, October, November, and December of 2022 and from January to March in 2023. The Applicant advised the tribunal that rent arrears had continued to increase since March 2023 and that no rent had been paid but he wished to continue with the application as it stood, seeking payment of rent arrears accrued up to and including March 2023 which amounted to £2880.

7. The Applicant explained that the Respondent had at some stage in 2022 approached the Letting Agent asking for repairs to be carried out at the property. He had complained regarding the boiler, he wanted a window replaced and had raised other minor issues. No rent had been paid by him since these issues were raised and the Applicant believed that the Respondent had advised the Letting Agent verbally that he did not intend to pay rent until the matters he was raising were rectified. This was never put in writing or in an email by the Respondent to the Landlord or the Letting Agent.

8. The Applicant had instructed that a gas engineer check the boiler. This was done in March 2023 and the boiler did not need repair nor did it require to be replaced. A gas safety certificate was issued for the boiler at that time. Legionella checks were carried out at that time and carbon monoxide alarms were installed. One repair was carried out to a wall in the back garden at the property which was crumbling and contained a part of the gas installation. The Applicant had obtained a Home Report dated 16th November 2022 when the issues had been raised. He indicated that the home report did not suggest any issues which required immediate attention at the property. His position was that although the property might require upgrading it was safe and habitable and complied with all the requirements which he had to adhere to as a landlord. The Tribunal did not have sight of the Home Report.

9. An issue which had been raised by the Respondent related to a draught at the front door of the property and a draught excluder had been purchased in order to rectify this issue. The Respondent had complained about a window at the property, but the

Applicant indicated this window was in working order and wind and watertight and so this had not been replaced.

10. At no stage did the Respondent acknowledge that checks and repairs had been carried out at the property. The Applicant had heard informally that the Respondent had indicated he had taken advice from Shelter and had been told not to pay the rent. At no stage did he communicate with the Applicant and despite a number of efforts by the Letting Agent to address the issue of the rent arrears with him he has not communicated on these matters and has simply carried on not paying rent. At no stage did he request an abatement of rent after he raised what he regarded as issues with the property.

11. The only contact the Applicant has had with the Respondent was in January of 2023 when he had a conversation with him by phone explaining that he intended to sell the property in the future and discussed with the Respondent as to whether he might be interested in buying the property. The Applicant Mr Mackay had the impression that the Respondent might be interested in buying the property but heard nothing further from him.

12. There has been no communication regarding the outstanding rent arrears from the Respondent despite efforts to engage with him by the Letting Agent and the Applicant has formed the impression that the Respondent is simply choosing not to pay the rent due in terms of the tenancy agreement.

13. The Applicant advised the Tribunal that the Respondent is still living at the property. The Applicant has taken legal advice and engaged solicitors to commence eviction proceedings.

14. The tribunal Legal Member was satisfied that there was sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact and Law

15. The parties entered into a private residential tenancy agreement at the property with effect from 15th November 2018.

16. The monthly rent originally payable in respect of the tenancy agreement was £325 per month.

17. By e-mail of 10th January 2019 Letting Agents behalf of the Applicant sought to increase the monthly rent payable to £360 per month with effect from 10th of March 2019.

18. The effect of this e-mail was to lawfully increase the monthly rent payable to £360 per month with effect from 10th April 2019 in terms of Section 22 of the Private Housing (Tenancies) (Scotland) Act 2016.

19. In 2022 the Respondent raised issues regarding the property and asked that certain repairs be carried out, indicating verbally to the Letting Agent at that time that he was not paying rent until matters were rectified.

20. The Applicant obtained a home report in November 2022 which revealed no issues requiring immediate attention at the property.

21. In March 2023 the boiler at the property was checked, and a gas safety certificate was issued without any requirement for repair or replacement of the boiler.

22. At the same time as the boiler was checked Legionella checks were carried out and carbon monoxide alarms installed at the property.

23. A repair was carried out in relation to an exterior wall of the property which housed a part of the gas installation for the property and was crumbling.

24. A draught excluder was purchased and put in place to deal with a draught coming in at the base of the front door at the property.

25. The Respondent raised issues concerning a window which he said required to be replaced but this has not been replaced and is functioning and wind and watertight.

26. The Respondent has paid no rent since August 2022 and despite a number of attempts by Letting Agents on the Applicant's behalf to engage with him regarding the rent arrears there has been no communication from the Respondent or payment by him.

27. At no time has the Respondent formally advised the Applicant that he was seeking to withhold rent pending repairs being carried out nor at any time has he ever asked for the rent due in terms of the tenancy agreement to be abated.

28. Unpaid rent due in terms of the tenancy agreement for the months of July, September, October, November, December in 2022 and the months of January, February, and March of 2023 amounts to £2880.

29. The sum of £2880 is lawfully due by the Respondent to the Applicant in terms of rent due and unpaid in terms of the tenancy agreement at this property.

Reasons for Decision

30. The Tribunal legal member considered that it was reasonable to grant a payment order in this application. Although the tribunal had information that the Respondent had raised issues with the property and verbally indicated that he was not paying rent until such time as the issues raised were dealt with, the Applicant explained the steps that had been taken to carry out checks and deal with the issues raised by the Respondent. The checks and repairs were not acknowledged by the Respondent and attempts to engage with him regarding the unpaid rent have been unsuccessful. He continues to stay at the property without paying rent and has not communicated with either the Applicant or the Letting Agent on the issue despite attempts to engage with him. He has not asked for rent to be reduced for any reason. He did not enter appearance at the tribunal, nor did he make any written representations setting out that the rent arrears being requested were not lawfully due by him. On the balance of the information before the tribunal it appeared appropriate to grant a payment order in respect of the unpaid rent arrears. The tribunal Legal Member noted that when the

rent been increased in 2019 the notice given to the Respondent was two months' notice contrary to section 22 of the Private Housing (Tenancies) (Scotland) Act 2016 which requires three months' notice to be given. The effect of this was that the rent increase would not have come into force until April 2019. This did not affect the period which was being considered by the tribunal in respect of rent arrears lawfully due by the Respondent.

Decision

The Tribunal determined that the Respondent should pay to the Applicant the sum of Two Thousand Eight Hundred and Eighty Pounds Only (£2880).

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.

Valerie Bremner

Legal Member/Chair

23.6.23
Date