



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/23/0863

Re: Property at 10/1 Southhouse Square, EDINBURGH, EH17 8DP (“the Property”)

Parties:

Mr David McMenemy, 12 Douglas Road, Glenrothes, KY6 3JZ (“the Applicant”)

Mr Tor Sagen, Cherish Eshelman, UNKNOWN, UNKNOWN; 19 (2F1) Rankeillor Street, Edinburgh, EH8 9JA (“the Respondents”)

Tribunal Members:

Rory Cowan (Legal Member) and Angus Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a Payment Order in the sum of £4,200 should be granted.

- Background

By application dated 16 February 2023 (the Application), the Applicant sought a Payment Order for £4,200 against the Respondents relative to rent arrears in relation to the Property up to and including 26 March 2023. Various supporting documents were lodged including the following:

- 1) Copy lease; and
- 2) Rent statement.

Following acceptance of the Application, a Case Management Discussion (CMD) was fixed to be heard by way of conference call on 14 June 2023 to be heard by way of conference call. By emails dated 26 April 2023 and 25 May 2023 the Applicant initiated an intention to seek an increase in the sum pursued to £5,125 and £6,050 respectively. Each email included an UpToDate rent schedule.

Service of the Application was made on the second named Respondent by way of sheriff officers. In relation to the first named Respondent, an application for service by way of advertisement was made and granted and a certificate of such service was provided by Tribunal administration for the CMD. Despite this, no written response was received from or on behalf of the first named Respondent.

- The Case Management Discussion

The Applicant appeared and represented himself. The Second named Respondent appeared and represented herself. The First named Respondent did not appear and was not represented. Notwithstanding, the Tribunal was of the view that proper intimation of the Application had been made and that the first named Respondent ought to be aware of the CMD and his requirement to attend and that if he failed to do so, the Application could be dealt with in his absence. The Applicant made a motion under Rule 14A of the Tribunal's rules of procedure to amend the Application and the sum sought. This was on the basis of the two emails he had sent to the Tribunal dated 26 April 2023 and 25 May 2023. The Applicant confirmed that, whilst these had been sent to the Tribunal, he had not intimated his applications to amend to the Respondents. He confirmed that he had relied upon an understanding that the Tribunal itself would forward the applications to the Respondent. Whilst that had been done, it was noted that, in relation to the later of the two emails, it had not been forwarded until 7 June 2023, which is less than 14 days before the CMD. The Tribunal considered the request and refused same. The terms of Rule 14A are clear that, if a party wishes to amend to, for example, increase the sum sought, not only do they require to lodge such an application with the Tribunal not less than 14 days before any hearing, but they also require to intimate such an application to the other parties. The Applicant had not done so and had therefore not complied with the requirements of Rule 14A. No motion was made to seek relief from the requirements of Rule 14A, but even if it had been, it would have been refused. The Applicant, when lodging the Application should ensure that he familiarises himself with the Tribunal's rules of procedure and comply with them. No party should rely upon the Tribunal's practice of copying correspondence to the other party as a substitute for compliance with the procedural rules. Further, in relation to the later email dated 25 May 2023, the second named Respondent would have only received notification on 7 June 2023, which is less than 14 days' notice. Beyond that, it is always open to the Applicant to raise further proceedings to seek payment of any arrears of rent not covered by this decision until the end of the tenancy, so he has not lost his opportunity to seek those additional sums.

The Applicant thereafter sought a Payment Order in the sum of £4,200 against the Respondents. He confirmed that, whilst the second named Respondent had vacated the Property in August 2022, he had received no notice from the first named Respondent and, in his view the tenancy had continued. The second named Respondent did not dispute the level of arrears or that she was liable for same as a joint tenant, despite the fact she may have vacated the Property. She was asked if she wished to seek a continuation of the CMD to consider a formal application for Time To Pay, but indicated she preferred to have the matter dealt with today. She indicated that it was her intention to discuss matter with the Applicant with a view to agreeing a payment plan. The Applicant indicated he was willing to have such a discussion. The Tribunal would certainly commend to the parties that agreeing a

sensible, reasonable and affordable payment plan is always preferable to formal payment action, but that is a matter for the parties to discuss between themselves.

- Findings in Fact

- 1) The Applicant and Respondents entered into a tenancy agreement relative to the Property.
- 2) In terms of the tenancy agreement between the Applicant and Respondents rent is payable at the rate of £925 per calendar month in advance and due on the 26th of every month.
- 3) As at 26 March 2023, the Respondents are in rent arrears to the extent of £4,200.

- Reasons for Decision

Under the lease between the parties, the Respondents are due to pay rent relative to the Property at the rate of £925 per month. As at 26 March 2023 they were in arrears to the extent of £4,200.

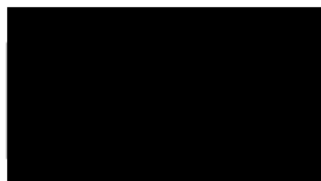
- Decision

That a Payment Order in the sum of £4,200 should be granted against the Respondents.

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.

Legal Member/Chair:



Date: 14th June 2023