



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/20/1248

Re: Property at Flat 18, 5 Simpson Loan, Edinburgh, EH3 9GX (“the Property”)

Parties:

Mr Bernt Lie, Ms Hong Lie, Olav T 18, 3125, TBG, Norway (“the Applicant”)

Mr Wilson Wishart, 37 Riverside Road, Edinburgh, EH12 5QY (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. Two applications were received under Rule 111 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for payment in relation to rent arrears. These two applications were heard together at today’s case management discussion.
2. The application cv/20/0532 made against the tenant, Aaron Cummings contained: -
 - a copy of the tenancy agreement,
 - a copy of the Applicant’s rental statement up to 14 February 2020 totalling £15,133.29
 - amendment of rent payment date

3. The application cv/20/1248 made against the guarantor, Wilson Wishart contained: -
 - a copy of the tenancy agreement,
 - a copy of the Applicant's rental statement as at 5 June 2020 totalling £17,233.29
4. The Applicant's agent, Mr Roddell from Umega Letting appeared with a supporter, Ms Moore.
5. There was no appearance from Aaron Cummings Respondent of application CV/20/0532. Service of the application had been made by sheriff officers on 30th July 2020. As service had been made on the Respondent I was prepared to deal with the case in his absence.
6. There was no appearance from Wilson Wishart, Respondent of application CV/20/1248. Service of the application had been made by sheriff officers on 30th July 2020. As service had been made on the Respondent I was prepared to deal with the case in his absence.

The Case Management Discussion

7. These applications related to the same matter, namely unpaid rent for the same property, and they involve the same tenancy agreement.
8. Accordingly, I agreed to amend application CV/20/0532 to include a second Applicant Bernt Lie. I also agreed to amend that application to include a second Respondent Wilson Wishart.
9. The sum of £17,233.29 had not amended in the CV/20/0532 application and therefore Aaron Cummings had not had notice of this sum. The Applicant advised that the current arrears were now £21,433.29.
10. I agreed to amend sum sought in application CV/20/0532 to £21,422.29 being rent due as at 21 August 2020.
11. Wilson Wishart had very recently advised the tribunal office that he had been sequestered in 2019. I had requested sight of evidence of his sequestration, as at today's date this had not been forthcoming. Sight of such documentation is required by the tribunal and the Applicant if Wilson Wishart wishes to oppose this application on this basis.
12. I agreed to continue application CV/200532 to another case management discussion to a future date in order that
 - a. The application is amended to show two Applicants, Bernt Lie and Hong Lie
 - b. The application is amended to show two Respondents, Aaron Cummings and Wilson Wishart

- c. For the sum sought to be amended to £21,422.29
- d. For the amended application to be re-served on the Respondents
- e. For the Applicant to submit an up-to-date rent statement.
- f. For Wilson Wishart to produce evidence of his sequestration if he wishes to oppose any order being granted against him in relation to unpaid rent due under application CV/20/0532

13. If any further arrears are sought prior to the next case management discussion then notice of the amended sum should be sent to the respondents and the tribunal office at least 14 days before the next CMD.

Reasons for Decision

14. In terms of rule 27 of the Tribunal Rules I dismiss application CV/20/1248 given that the Respondent in that application is now the second respondent in CV/20/0532, and given that the issue raised in both applications is the same issue. I consider that I have no jurisdiction to deal with the same matter in two separate applications.

Decision

15. Application CV/20/1248 dismissed

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.

M. Barbour

Legal Member/Chair

21 August 2020

Date