



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/20/2147

Re: Property at 34 Liddel Road, Cumbernauld, G67 1JD (“the Property”)

Parties:

Mr Salah Alkirwi, 47 Main Street, Cumbernauld, G67 2RT (“the Applicant”)

Ms Brenda Galloway, Ms Sarah McKinstry, 15c Tarbolton Road, Cumbernauld, G67 2AH; 34 Liddel Road, Cumbernauld, G67 1JD (“the Respondent”)

Tribunal Members:

Ruth O’Hare (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order in the sum of £10,264.83 plus interest at the rate of 3.5% per annum from the date of decision until payment against the Respondents.

Background

- 1 By application to the Tribunal, the Applicant sought an order against the Respondent for unpaid rent arrears together with interest at 3.5%. In support of the application the Applicant submitted Tenancy Agreement between the parties together with guarantor agreement dated 22 November 2010, rent schedule and correspondence between the parties.
- 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 9 February 2021.

- 3 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.
- 4 The first Case Management Discussion took place on 18 December 2020. The Applicant was in attendance. Ms Sarah McKinstry was also in attendance. Ms Galloway did not attend. Ms McKinstry confirmed that she had entered into a tenancy agreement with the Applicant. Her circumstances had changed significantly since 2010. She confirmed that Ms Galloway was her former partner's mother who had signed the agreement as guarantor. Rent was paid initially however Ms McKinstry subsequently became entitled to housing benefit. That entitlement stopped when she commenced work in January 2019. She accepted that she had not paid rent since April 2019. She was waiting to be rehoused by the local authority. She believed she may be entitled to some backdated housing benefit, having spoken to the Citizens Advice Bureau. The Applicant confirmed that he was seeking an order for the outstanding rent arrears however he had no objection to a postponement to enable Ms McKinstry to seek advice regarding her housing benefit and to make an offer for payment once the position was clarified. The Tribunal further noted that the arrears had increased and the Applicant may therefore wish to apply for the sum sought to be amended.
- 5 By email dated 25 January 2021 the Applicant applied to the Tribunal to amend the application to increase the sum sought to £10, 804.83 as at 22 January 2021. A copy of the email was intimated to the Respondent. By email dated 25 January 2021 the Respondent advised that she had paid rent for January as agreed.
- 6 On 9 February 2021 the Applicant emailed a revised rent statement to the Tribunal confirming that the arrears were £10,264.83, with a payment of £540 having been made on 25 January 2021.

The Case Management Discussion

- 7 The Case Management Discussion took place by teleconference on 9 February 2021. The Applicant was in attendance. Ms McKinstry was also in attendance. There was no appearance by Ms Galloway. The Legal Member noted that Ms Galloway had previously been served with the application paperwork by Sheriff Officers and therefore determined to proceed in her absence in terms of Rule 29 of the Procedural Rules.
- 8 The Legal Member confirmed that the Applicant sought an order for payment in the revised sum of £10,264.83. She asked Ms McKinstry to provide an update regarding housing benefit. Ms Kinstry addressed the Tribunal at length. In summary she advised that she had received help from her parents to pay the rent for January. She was on universal credit and was just

managing to pay the rent. She did not know how she would pay back the arrears and was looking for a reasonable payment plan. She didn't understand how the Applicant had let the arrears accrue to the present level. He should have sought an eviction order at an earlier stage. In response to questions from the Legal Member Ms McKinstry explained that she had not had any recent contact from Ms Galloway, who had her own financial problems to deal with.

- 9 The Applicant explained that he had a system of notifying tenant when arrears accrued. He had sought an eviction order against Ms McKinstry however due to an error in the paperwork the initial application had failed. Ms McKinstry had not sought to contribute any payments towards the rent account. Ms McKinstry in response stated that she had not known she could pay sporadic amounts – all correspondence requested the full amount of rent to be paid.

Findings in Fact and Law

- 10 The Applicant and Ms Sarah McKinstry entered into a Tenancy Agreement which commenced on 22 November 2010.
- 11 By agreement dated 22 November 2010 Ms Brenda Galloway undertook to guarantee Ms Sarah McKinstry's obligations under the said Tenancy Agreement.
- 12 In terms of the said Tenancy Agreement Ms Sarah McKinstry had a contractual obligation to pay rent of £520 per month.
- 13 Ms Sarah McKinstry defaulted on her obligation to pay rent in April 2019.
- 14 As at the date of the Case Management Discussion rent arrears in the sum of £10,264.83 are outstanding.

Reasons for Decision

- 15 Having considered the written representations from the parties and the verbal submissions at the Case Management Discussion the Tribunal determined it could make a determination of the application and that to do so would not be prejudicial to the interests of the parties.
- 16 Based on its findings in fact, the Tribunal was satisfied that the Respondents were jointly and severally liable to pay the sum of £10,264.83. The Tribunal was further satisfied that interest on the sum due at the rate of 3.5% per annum from the date of decision until the date of payment was reasonable, as sought by the Applicant. The Tribunal noted from the terms of the guarantor agreement that Ms Brenda Galloway was jointly and severally liable for the

outstanding arrears and it would therefore be appropriate to make the order against both Respondents.

- 17 The Tribunal therefore made an order in the sum of £10,264.83 plus interest at the rate of 3.5% per annum from the date of decision until payment 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.

Ruth O'Hare

9 February 2021

Legal Member/Chair

Date