



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/21/1050

Re: Property at 34 Woodside Terrace, Elgin, IV30 4AZ (“the Property”)

Parties:

Mr James Ramsay, Mrs Mary Ramsay, 68 McIntosh Drive, Elgin, Moray, IV30 6AW (“the Applicants”)

Miss Jacqueline Hewitson, Mr Scott MacKenzie, 34 Woodside Terrace, Elgin, IV30 4AZ (“the Respondents”)

Tribunal Members:

Lesley Johnston (Legal Member) and Leslie Forrest (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for Payment in the sum of £4,813 should be granted.

Background

1. In this application the Landlords, James and Mary Ramsay (‘the Applicants’) seek an Order for possession of the property at 34 Woodside Terrace, Elgin, IV30 4AZ in terms of section 33 of the Housing (Scotland) Act 1988 (‘the Act’). The applicants have lodged a separate application for eviction in respect of the same tenancy (Ref: FTS/HPC/EV/21/1049).
2. The Tenants at the property are Jacqueline Hewitson and Scott MacKenzie (‘the Respondents’).
3. The application is made in terms of Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017 (‘the Rules’).

4. The Applicants lodged the following documents with the application:
 1. Lease dated 24 July 2014
 2. AT5 Notice dated 22 July 2014
 3. Redacted bank statements relating to rental payments
 4. Notice to Quit dated 31 October 2020
 5. Section 33 Notice dated 31 October 2020
 6. Statement from Mr Ramsay re service of the Notices
 7. Screenshot of text message from the Respondent
 8. Section 11 Notice
 9. Copy email from Moray Council dated 13 My 2021 acknowledging receipt of section 11 Notice
 10. Rent statement to May 2021
 11. Updated rent statement to June 2021

The Case Management Discussion

5. The case called for a Case Management Discussion by telephone on 28 July 2021 at 10am along with the application for eviction.
6. The Applicants were personally present and unrepresented.
7. The Respondents were neither present nor represented.
8. The Tribunal was satisfied that notice of the hearing was effectively given to the Respondents, the application and notice of the hearing having been served by Sheriff Officers by way of personal service on 2 July 2021. Accordingly, the Tribunal was content to proceed in the Respondents' absence in terms of Rule 29.

Submissions by the Applicants

9. The Applicants submitted that the Order for Payment should be granted. The Applicants submitted that the arrears had increased to £5,288 to take account of the rent due to July 2021. The Applicants asked that the Tribunal amend the application in that sum, unless doing so would delay the application process, in which case they were content to seek payment in the sum of £4,813.
10. The Applicants and Respondents entered into a short assured tenancy on 24 July 2014. All lease documentation was signed on that date. The date of entry was 1 August 2014 for an initial period of six months, with the lease continuing on a monthly basis thereafter.
11. The initial rent due under the lease was £450 per calendar month. The first payment was due on 25 July 2014 and monthly thereafter, payable on the last Friday of each month. The rent was increased by £25 from December 2017, notice of the increase having been provided in writing to the Respondents in October 2017. The increase in rent was reflected in the Respondents having paid £475 as the monthly rent thereafter.

12. The Applicants referred to the rent statement to June 2021. The statement commenced from January 2020 showing the arrears from that date. The Applicants explained that there had been a history of arrears/late payment prior to that. However, the Respondents had cleared those arrears. The arrears sought in this application go back to January 2020, on which date the arrears stood at £475. While some payments of rent had been made since then, the arrears have steadily increased to £4,813 to June 2021.
13. The Applicants had previously served a Notice to Quit in May last year. However, the Respondents, with assistance from the Council, persuaded the Applicants to enter into an agreement in terms of which the Respondents would pay £30 per month towards outstanding rent and would pay the ongoing rent timeously in exchange for which the Applicants agreed to withdraw the Notice to Quit.
14. However, the agreement was not adhered to, and the Respondents continue to reside in the property without making payment of rent. The Applicants have attempted to engage with the Respondents to have the arrears cleared, however, they rarely get any response to their correspondence.
15. The Applicants have been reluctant to take the step of raising proceedings with the Tribunal and have tried their very best to be accommodating to the Respondents. However, they have reached the stage where the Respondents are not engaging and have not engaged with this process. The Respondents have not made any proposal for payment.

Findings in Fact

16. The Tribunal made the following findings in fact:
 - The Applicants are the heritable proprietors of the property at 34 Woodside Terrace, Elgin, IV30 4AZ.
 - By Lease dated 24 July 2014 the Applicants and the Respondents entered into a tenancy agreement in respect of the property.
 - The Respondents took possession on 1 August 2014
 - The rent due in terms of the lease was initially £450, increased to £475 from December 2017.
 - The first payment of rent was due to be paid on 25 July 2014, and monthly thereafter on the last Friday of every month.
 - The Respondents fell into rent arrears in January 2020.
 - As at January 2020 the rent arrears on the account were £475.

- The parties entered into an agreement in May 2020 that arrears would be cleared by way of a payment of £30 per month in addition to payment in full of ongoing rent
- The Respondents made payments of £30 towards arrears in June and July 2020 and a payment of £5 in November 2020
- The Respondents made payments of rent from the period January 2020 to the date of the application as follows:

March 2020: £475

April 2020 £400

May 2020: £422

June 2020: £475

July 2020: £475

August 2020: £475

October 2020: £475

November 2020: £475

- The Respondents have made no payments of rent or arrears since November 2020.
- An application was made to the Tribunal on 2 May 2021.
- The rent arrears have increased to £4,813 as at June 2021.
- The Respondents have not made any proposal for payment.

Decision

Amendment

17. The Tribunal determined that an amendment to increase the sum sought in terms of the application would require to be intimated to the Respondents. In the circumstances, the Applications did not insist on the amendment and the application proceeded on the basis of the sum sought to June 2021, namely £4,813.

Application

18. The Tribunal is satisfied that the parties entered into a lease on 24 July 2014 and that the rent due in terms of the lease from December 2017 was £475 per month, payable on the last Friday of each month.
19. On the information before it, including the rent statement and the redacted bank statements, the Tribunal is satisfied that the Respondents fell into rent arrears from January 2020. Despite some payments of rent since that date, including some small payments towards the arrears, the arrears have continued to increase to £4,813 as at June 2021. The Respondents last made a payment of rent in November 2020 and at that time made a £5 contribution to arrears. Since then, the Respondents have made no payments.
20. The Applicants have made efforts to try to resolve the outstanding arrears, including entering into an agreement in terms of which the Respondents undertook to pay £30 per month towards the arrears as well as their payments of rent. However, that agreement has not been adhered to.
21. In all the circumstances, the Tribunal considers that the sum of £4,813 is due to be paid by the Respondents in terms of the lease between the parties and determines that an Order should be granted in that sum.
22. The Tribunal wishes to note that while the Applicants advised in the application that instalment payments of £10 per month would be acceptable, the Respondents have made no Time to Pay Direction application to the Tribunal. The Tribunal therefore grants the order in the full sum sought.

Decision

23. The Tribunal grants an Order for Payment in the sum of £4,813.

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.

28 July 2021

Legal Member/Chair

Date