



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/21/1241

Re: Property at 33 Corrie Crescent, Saltcoats, KA21 6JL (“the Property”)

Parties:

Mr Paul John Francis, 5 Carnbrook Road, London, SE3 8AA (“the Applicant”)

Mr Martin James McKillop, Ms Katleen Laperie, 33 Corrie Crescent, Saltcoats, KA21 6JL; 29 Davaar Road, Saltcoats, KA21 6HB (“the Respondent”)

Tribunal Members:

Nairn Young (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the first-named Respondent)

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

- Background

This is an application for an order for payment of rent arrears alleged to be owed by the Respondents, in terms of a private residential tenancy agreement with the Applicant. It called for a hearing at 10am on 24 February 2022, by teleconference. The Applicant was represented on the call by Mrs Petrescu, of Barnetts, solicitors. The Second Respondent was represented by Mr Alister Meek of CHAP. The First Respondent was not on the call in person and was not represented. The commencement of the hearing was delayed by 10 minutes to allow for any technical difficulty he may have been experiencing, but he did not make contact.

The Tribunal noted that he had not attended at several previous callings of the case and had not responded to the directions issued in it thus far. It concluded that he did not intend to take part in proceedings and considered that it was fair to proceed in his absence.

- Findings in Fact

1. The Respondents occupy the Property in terms of a private residential tenancy, with a start date of 1 July 2018.
2. Rent of £600 is due on the first of each month, in terms of the tenancy agreement.
3. An additional payment of 8% per annum is due on any unpaid rent in terms of the tenancy agreement.
4. The tenancy agreement also provides that, "The Tenant shall be held liable for any further reasonable costs incurred by the Landlord through the Tenant's failure to pay rent on time including, but not limited to, ... any expenses incurred by the Landlord in pursuing the Tenant for payment of said unpaid rent, legal or otherwise."
5. On 1 January 2020, the Respondents did not make any payment of rent.
6. Since that date, there have been various payments made to the rent account, but never sufficient to clear the arrears accrued.
7. This application was raised seeking the sum of £3,940.79 in rent arrears and has subsequently been amended to seek £4,598.27.
8. The sum sought in interest was not originally specified: but has now been amended to £367.86.
9. On the date of the hearing, the sum of £4,737.99 was outstanding in rent.

10. On the same date, at least £367.86 was due in interest in terms of the lease.

11. Neither Respondent has behaved unreasonably in conducting their defence of this case.

- Reasons for Decision

12. A preliminary point had to be considered in this case in relation to a request to amend the sum sought that was received by the Tribunal on the day before the hearing. As a request to amend the application form itself, that did not raise new issues, the Tribunal considered that this fell under rule 14A of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('the Rules'). That rule requires any such request to be intimated to the Tribunal and all other parties at least 14 days prior to any hearing. In this instance the request had only been intimated to the Tribunal and without sufficient notice. The Applicant's representative indicated that he would not wish to apply for a postponement to allow the amendment request to be intimated in terms of the rule and it was therefore allowed to drop.

13. In terms of the substance of the application, the factual background was ultimately not disputed. It was suggested at the case management discussion preceding the hearing that the second-named Respondent could not be held liable for rent arrears accrued after March 2020, when she left the Property. At that time, it was suggested, she was misled into believing that she could not unilaterally terminate the tenancy, or her interest in it, by the Applicant's agents. The factual points surrounding that position were in dispute, resulting in the hearing being fixed. By the time of the hearing, however, the second-named Respondent's agent accepted on her behalf (correctly) that the position in law is that a joint tenant under a private residential tenancy may not unilaterally terminate it.

14. On the basis of the facts as admitted, therefore, the Respondents owe (at least) the amount sought in rent arrears and an order for payment of that amount should be made.

15. The Applicant had applied for two other sums to be included in any order for payment: a charge of 8% per annum in interest on the sum outstanding (£367.86) and a total of £6,048 in legal expenses incurred in pursuing this application.
16. The second-named Respondent's representative indicated that she did not dispute the sum calculated as due in interest, or that this could be granted as a debt payable under the terms of the tenancy agreement. However, he submitted that it was not reasonable to include the amount calculated as legal expenses in any order.
17. The Applicant's position was, in essence, that both of these sums are due in terms of the contract and that they may therefore be the subject of an order for payment issued by the Tribunal.
18. The Tribunal noted the terms of rules 40 and 41A of the Rules, which read:

“40.— Expenses

(1) The First-tier Tribunal may award expenses as taxed by the Auditor of the Court of Session against a party but only where that party through unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense.

(2) Where expenses are awarded under paragraph (1) the amount of the expenses awarded under that paragraph must be the amount of expenses required to cover any unnecessary or unreasonable expense incurred by the party in whose favour the order for expenses is made.

...

41A.— Interest on orders for payment

(1) The First-tier Tribunal may include interest when making an order for payment.

(2) Where paragraph (1) applies, the interest is to be at the rate either—

(a) stated in the relevant tenancy agreement, or

(b) ordered by the First-tier Tribunal,

and running from the date of the decision of the First-tier Tribunal.”

19. On the basis of these rules, it determined to include the sum sought as interest in the order; but to refuse the application to do so insofar as legal expenses were concerned.

20. While rule 41A states that interest may be included when making an order for payment, and limits the running of such an award to be from the date of the decision of the Tribunal, the Tribunal considers that this must be read to apply only to such interest as might be awarded on the sum granted in terms of the order, rather than to sums due in terms of contractual interest provisions. The title of the rule supports that interpretation.

21. On the contrary, the terms of rule 40 appear to apply to any expenses and, as such, must be seen as limiting the Tribunal's power to award even expenses that may be due in terms of the tenancy agreement. That accords with the policy that expenses are not generally awarded in tribunal proceedings, to allow equal access to tenants, who are more likely to be unable to risk the financial repercussions of an unsuccessful claim. If the rule were not to be read in this way, it would be straightforward manner for landlords to contract out of the rule.

22. Expenses may only be awarded on the basis of unreasonable behaviour in the conduct of the case. The Tribunal did not consider that any such behaviour had been demonstrated by the Respondents.

23. For all of these reasons, therefore, the Tribunal decided to make an order for payment of the rent outstanding (as sought) and the contractual interest thereon.

- Decision

Order granted for payment by the Respondents to the Applicant of the sum of £4,966.13 (FOUR THOUSAND, NINE HUNDRED AND SIXTY-SIX POUNDS AND THIRTEEN PENCE STERLING).

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.

Nairn Young

24 February 2022

Legal Member/Chair

Date