



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/21/1332

Re: Property at 48 Cattofield Square, Aberdeen, AB25 3QB (“the Property”)

Parties:

Ms Jane Richardson, c/o Easthaven Property Management, 44 Albert Street, Aberdeen, AB25 1XS (“the Applicant”)

Ms Joyce Bepete, 48 Cattofield Square, Aberdeen, AB25 3QB (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Sandra Brydon (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 be granted in the sum of £12,000 plus interest at 3%.

Background

- The Applicants submitted an application for an order for payment of rent arrears arising out of the Tenancy of the Property by the respondent dated 2nd June 2021. The Applicants are also seeking interest from the date of order of payment.
- In support of their application they lodged the following documents:-
 - A copy of the lease dated 21st December 2018
 - Copy rent statement showing arrears of rent due at June 2021
 - A copy of an e-mail from Applicant’s agent to Respondent dated 25th May 2021
- Prior to the CMD by e-mail dated 8th July 2021 the Applicant lodged a request to amend the amount of rent arrears sought this civil action to £12000 advising that there had been no payment made in July 2021. The Applicant’s representative had also lodged a written response to the Tribunal’s request as

to the legal basis on which the Tribunal could order the Respondent to pay interest and the amount of interest it would be appropriate to award.

- A Case Management Discussion (CMD) was held by teleconference in view of the current Covid 19 pandemic, at 10am on 26th July 2021. It was conjoined with a CMD for an eviction action.
- The Applicant's representative Mr Aaron Doran of Raeburn Christie Clark and Wallace Solicitors attended the CMD, on behalf of the Applicant. The Applicant was not present.
- The Respondent did not attend, nor did anyone appear on her behalf. There had been no reason intimated in advance for her non-appearance nor any request made for a postponement of the CMD. The Tribunal noted that valid intimation of the CMD had been made to the Respondent having seen a certificate of execution of service by Sheriff Officers on the Respondent dated 24th June 2020. The Tribunal delayed the start of the CMD by 10minutes to see if the Respondent was late in joining but she did not join. Accordingly the Tribunal proceeded to hold the CMD in the absence of the Respondent.

The Case Management Discussion

- The Convener made introductions and explained the purpose of the CMD which is to explore the issues and to determine whether a full hearing is required or not. The Convener confirmed that the tribunal can make any decision at a CMD that it can make after a full hearing.
- There were no written representations received from the Respondent.
- Mr Doran confirmed that there have been no further payments of rent since he raised the application and confirmed the Respondent is still resident in the Property and has not terminated the lease. He advised in response to questions that the Applicant had left the Property during 2020 when she appeared to have gone to be with her partner in Dunoon and to work on a business there but Mr Doran confirmed that when he raised on behalf of the applicant a notice to leave based on the Respondent not living in the Property she returned to the Property and confirmed she was living there. The letting agent met the tenant there and could confirm she was currently living there. Mr Doran explained that he then served on behalf of the Applicant a new Notice to Leave on the basis of ground 12 and the fact there were over 3 months' rent arrears due and owing. He also advised that he was contacted by someone from Money Advice from Aberdeen City Council initially in June 2021 who advised him they had been appointed by the Respondent. The person then checked with Mr Doran on 21st July 2021 the date and purpose of the CMD which Mr Doran confirmed, but he advised that despite this there have been no proposals or further contact since then.
- Mr Doran confirmed the rent arrears are substantial and causing a lot of stress to the Applicants as there have been no payments since February 2020. He confirmed the letting agent sends out monthly updates to the tenant and has received no communication from the tenant since last year. He confirmed that as well as sending advice to the tenant about where she could access support and help on 26th November 2020 he sent another e-mail on 25th May 2021 referring to the rent arrears, advising that his client wished to work with the Respondent to help pay the arrears and further advising the Respondent should seek legal advice. He confirmed there has been no

communication from the Respondent directly since last November. On her return to the Property in November 2020 after a period away she assured Mr Doran that she would deal with the arrears but had advised that due to the lockdown the hotel business had had to close. Mr Doran advised initially that he thought she may have returned to work in a hospital, a job she had previously done, but now believes she may have remained working with the hotel business from speaking to the letting agent.

- Mr Doran submitted given the lack of response from the Respondent and no offer of payment it would be reasonable for the Tribunal to grant an order for payment of the amended sum of £12,000 together with interest at a rate to be determined by the Tribunal.

Findings in Fact

- The parties entered into a lease of the Property which commenced on 21st December 2018.
- The Rent due in terms of the lease is £750 per calendar month payable in advance
- The tenant is still living in the Property
- The Applicant produced a statement of rent showing that since March 2020 there have been no payments of rent.
- As at the date of the Application there was £11,250 of rent outstanding.
- Today the rent outstanding is £12,000 and a timeous application to amend the sum sought has been made by the Applicant on 8th July with a copy served on the Respondent.
- Interest on any award has been sought in the application.

Reasons for Decision

- The parties have entered into a lease where the Respondent has leased the property from the Applicant and has agreed to pay £750 per month in rent due and payable on the first of each month.
- The Respondent has failed to pay the full rent due and in particular has not paid anything towards the rental sums since paying January and February's payment in one sum in January 2020.
- No further sums have been paid.
- The Tribunal accepts the written evidence and verbal statements made by the Applicant's representative, who the Tribunal found clear and credible in his submissions that the rent outstanding as of 26th July 2020 amounts to £12,000. This is an increase from the sum of £11,250 requested in the application but this increase and change to the application has been intimated on the Respondent. In the absence of any response from the Respondent the Tribunal find it fair and appropriate to make an order for payment for that sum today.
- The Tribunal noted the applicant's request for interest and suggestion that if the Tribunal was not minded to award 8%, which is judicial interest, the sum of 4% would be reasonable. The Tribunal advised that the Tribunal has no authority to apply judicial interest at 8% but could apply, if requested which

the Applicant has done, a reasonable rate of interest which the Tribunal finds to be a rate of 3%.

- There being no application for time to pay the Tribunal makes an order for payment of the sum claimed as amended.
- **Decision**
- An order for payment of the sum of £12,000 is granted with interest at the rate of 3% from the date of the decision.

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.

J. T

Legal Member/Chair

26th July 2021
Date