



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) Act 2016 (“the Act”)

Chamber Ref: FTS/HPC/CV/21/1511

Re: Property at 15 Woodburn Road, Dalkeith, EH22 2AS (“the Property”)

Parties:

Wilson Property Investments (Scotland) Ltd (Company number SC573021), 54 Park Drive, Wallyford, East Lothian, EH21 8DA (“the Applicant”)

Mr Damian Suwala, 15 Woodburn Road, Dalkeith, EH22 2AS (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatrige (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order by the Respondent to the Applicant for the sum of £3,465.76 should be granted, reflecting the rent arrears due up to and including 5 June 2021.

Background

This is an application for payment of outstanding rent lodged with the Tribunal on 23 June 2021 in terms of S 71 (1) of the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act) and Rule 111 of the Procedure Rules.

The Applicant was for payment of arrears of rent as per the rent schedule attached to the application, which shows arrears of rent of £3,465.76 as at 5 June 2021.

The Applicant had lodged the following documents in evidence: a) the Private Residential Tenancy Agreement for the property commencing 5 July 2019 and b) the rent statement up to and including the date of 5 June 2021.

A Case Management Discussion (CMD) was scheduled for 8 September 2021. The Respondent was notified of the application and the CMD date and manner of joining through service by Sheriff Officers effected on 6 August 2021. The Tribunal was satisfied that sufficient and correct notice of the CMD and application details had been given to the Respondent.

The Case Management Discussion

The Applicant's representative Ms Van der Velde attended the telephone conference. The Respondent did not attend.

She explained that there had been no direct contact between the Applicant and the Respondent but that the letting agent employed by the Applicant had tried to assist the Respondent in addressing the rent arrears situation but the Respondent had not engaged and had made only insufficient further rent payments since the application was lodged and not reduced the arrears. In fact the current outstanding arrears were £4362.15. .

There have been no representations of the Respondent in the case.

The Legal Member explained that since the increased amount had not been intimated to the Tribunal prior to the hearing, the limit of an order, if the Applicant wished this granted on the day of the CMD, would be the original sum stated in the application. Alternatively, if the Applicant wished to amend the sum to a higher sum, then a second CMD would have to be scheduled and an amendment application made by the Applicant. The Applicant's representative stated she wished the application to be dealt with at the CMD.

Findings in Fact

Based on the documents submitted and the information provided at the CMDs in the case the Tribunal is satisfied that the following facts have been evidenced:

1. The Applicant and the Respondent entered into a Private Residential Tenancy Agreement for the property commencing on 5 July 2019. (Clause 6)
2. Rent of £695 per calendar month was payable in advance on the 5th day of the month (Cause 8).
3. The tenancy is ongoing
4. As at the date of the CMD rent arrears of £ 3,465.76, reflecting the arrears up to and including 5 June 2021, remain outstanding.

Reasons for decision

1. The Tribunal considered that the material facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:
Case management discussion
17.—(1) The First-tier Tribunal may order a case management discussion to be held—
(a) in any place where a hearing may be held;
(b) by videoconference; or
(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;
- (b) identifying what facts are agreed between the parties;
- (c) raising with parties any issues it requires to be addressed;
- (d) discussing what witnesses, documents and other evidence will be required;
- (e) discussing whether or not a hearing is required; and
- (f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

2. However, in terms of Rule 18 of the Rules of Procedure:

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—
(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,
a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

3. The documents lodged are referred to for their terms and held to be incorporated herein. The Tribunal makes the decision on the basis of the documents lodged by the Applicant and the information given at CMDs.

4. The Tribunal did not consider that there was any need for a hearing as there had been no defence lodged by the Respondent and the application had not been opposed. In terms of Rule 18 of the Rules of Procedure the Tribunal is satisfied that it is not contrary to the interests of the parties to make a decision at the CMD and that the information available in document form and from the Applicant's representative at the CMD allows sufficient findings to determine the case.

5. The Respondent had fair notice of the representations of the Applicant forming the reasons for the application and the arrears amount and had not challenged these.

6. The Tribunal is satisfied that the Respondent had entered into a Private Residential Tenancy Agreement with the Applicant for the property with a monthly rental charge of £695 and had failed to make the necessary rental payments as shown in the arrears statements lodged. The Respondent had not put forward any reason why the rent should not be due. The Tribunal is satisfied that the rent

arrears remaining outstanding up to the date of 5 June 2021 remain outstanding and that the arrears have not been reduced or cleared by the time of the CMD.

9. The Applicant is entitled to a payment order for the sum of £3,465.76 for the rent arrears due up to and including 5 June 2021, which is the date of the rent statement.

Decision:

The Tribunal makes an order for payment of the amount of £3,465.76 of arrears of rent by the Respondent to the Applicant.

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.

Petra Hennig McFatridge

8 September 2021

Legal Member

Date