



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) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/22/0267

Re: Property at 36 Reay Ave, East Kilbride, G74 1QT (“the Property”)

Parties:

Mr James McFadyen, 6 Blairston Ave, Bothwell, G71 8RU (“the Applicant”)

Mr Jonathan Murphy, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Valerie Bremner (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 be made against the Respondent and in favour of the Applicant in the sum of Two Thousand Six Hundred and Seventeen Pounds and Thirty Pence Only (£2617.30)

Background

1. This application for a payment order was first submitted to the tribunal on 1st February 2022 and was accepted by the tribunal on 4th July 2022. A case management discussion was originally set down for 9th September 2022 and this required to be cancelled due to the closure of courts and tribunals on that date following the death of Her Majesty Queen Elizabeth II.

2. A further case management discussion was fixed for 25th of November 2022 at 10:00 am and this was continued until 31st March 2023 as the Applicant’s representative did not attend. This case management discussion was continued to 16th June 2023 for service on the Respondent by advertisement as his address is unknown. On 16th June 2023 the Applicant’s representative could not access the call and a final case management discussion was fixed for 21st July 2023 at 10am.

Case Management Discussion

3.The case management discussion on 21st July 2023 was attended by Ms Franchitti of Property Angels Letting Management to represent the Applicant. Her colleague Ms Birch attended for part of the call. There was no appearance by or on behalf of the Respondent.The Tribunal was satisfied that the requirements of fair notice had been met as it is not known where the Respondent lives and the application had been the subject of service by advertisement on the Tribunal website in terms of Rule 6A of the Tribunal rules of procedure.

4.The Tribunal had sight of the application, a tenancy agreement, a rent account statement, emails from the Applicant's representative, an email from the Respondent to say he was leaving the property and an email from the Applicant's representative addressing points raised by the Respondent in written representations lodged by him in advance of the first case management discussion. The Respondent had known of the initial application and supporting papers as these had been served on the Respondent by Sheriff Officers who met him and handed these over personally to him. At this time in August 2022 the Respondent had declined to provide an address to Sheriff Officers. He had submitted written representations to the Tribunal dated 8th September 2022.

5.The Applicant's position was that the parties had entered a private residential tenancy at the property with effect from 11th February 2021 and this had ended when the Respondent left the property in early March 2022.Monthly rent payable during the tenancy was £575 per month and rent arrears had accrued at the property for the period between 25th August 2021 and 10th February 2022.The Applicant was seeking rent arrears for this period and not for the few weeks after 10th February 2022 before the Respondent indicated he was vacating the property. In the application lodged with the Tribunal the amount sought by way of rent arrears was £3450.In the rent statement lodged it appeared there was a period of 13 days in December 2021 which was entered twice in the arrears statement and after discussion the sum of £245.70 was deducted from the rent arrears total to cover 13 days at the daily rate of £18.90.The Applicant's representative Ms Birch was able to confirm that the Respondent's deposit of £862 had been recovered from a tenancy deposit scheme and after deductions for damage, cleaning and removal of items from the property the remaining £587 had been retained towards rent arrears. The total sum being sought in relation to rent arrears was therefore £2617.30.

6.In the representations made by the Respondent in September 2022 the Respondent had denied that rent arrears existed. He said that he had paid rent to the landlord directly or his guarantor. He said he was never advised to pay the Applicant's representative. The Respondent also claimed that he had returned to the property on or about 20th October 2021 and found that the locks had been changed by the landlord and that this had been done illegally. He said he could no longer occupy the property after that date and paid no rent. He said he was never given a set of keys after that date. He referred to having paid a deposit of £1200 which he said was never returned to him and said that the lease had been frustrated by the change of lock.

7. In response to these points Ms Franchitti had lodged written representations for the Applicant. She pointed to the tenancy agreement which stated quite clearly that the rent was to be paid to the Applicant's property managers Property Angels Letting and Management and bank details for the firm were given in the tenancy agreement. The Respondent had paid sums towards the rent direct to the Applicant's representatives and these had been paid in March, April, May, July and September 2021. There had been no direct contact between the Respondent and the landlord throughout the tenancy and if the guarantor had received rent payments this was not an arrangement agreed by the Letting Agent and no monies had been passed on to them or the landlord from the guarantor.

8. On 25th November 2021 the Applicant's representative had received a call from a neighbour at the property address to say that the door of the property had been left wide open for some days and the neighbour was concerned. After being unable to reach the Respondent the Applicant's representative advised the guarantor that they would attend the property. The Applicant's representatives, the property managers attended the property and found it fully furnished with the door unlocked and open. As the Applicant's representative did not have a spare key, they required to change the lock and notified the Respondent and guarantor as to the fact that this had been done and the reasons for it. The Respondent never attended the property manager's office to uplift a key and several attempts were made to meet the Respondent at the property with a key, but he did not turn for these arrangements. He had advised he had left the property around the start of March 2022 and at no stage during the tenancy or at that time had he advised that he had been unable to occupy the property – he had simply said he had left and would not be returning and mentioned what could be done with belongings at the address. Ms Franchitti said that there were failures to pay rent by the Respondent before the date of this incident which had been in November and not October 2021.

9. Ms Franchitti confirmed that the deposit paid by the Respondent was £862 as set out in the tenancy agreement and not £1200. This had been claimed back by the landlord and sums deducted for damage, cleaning and removal of items. What was left of the deposit, some £578 had been put towards rent arrears.

10. The Tribunal noted that the Respondent had known of the ongoing application and although he had entered representations around the time of the first case management he had not attended or been represented at any of the subsequent dates to put his position forward.

11. The Tribunal Legal Member considered that there was sufficient information upon which a decision could be made and that the proceedings had been fair.

Findings in Fact

12. The parties entered into a private residential tenancy at the property with effect from 11th February 2021.

13. This tenancy ended on or about the beginning of March 2022 and the Applicant is seeking rent arrears accrued in terms of the tenancy agreement up to 10th of February 2022.

14. The monthly rent due in terms of this tenancy agreement was £575 per calendar month.

15. The Respondent paid a deposit in respect of the tenancy in the sum of £862.

16. Rent arrears started to accrue at the property in 2021 and rent was not paid for the period between August 25th 2021 and February 10th 2022.

17. The Applicant claimed back the deposit paid by the Respondent from a tenancy deposit scheme and after deductions for damage, cleaning, and removal of items from the property retained the sum of £578 towards the accrued rent arrears.

18. When rent was paid by the Respondent it was always paid to the property managers acting on behalf of the landlord as set out in the tenancy agreement and no other arrangement for payment of rent by the Respondent direct to the landlord or through a guarantor was ever made or agreed on behalf of the Applicant

19. The landlord had no direct contact with the Respondent during the tenancy and the property was fully managed on his behalf.

20. The Applicant's agents were advised by a neighbour in November 2021 that the door of the property had been wide open for some days and the property insecure.

21. The Applicant's property managers attempted to contact the Respondent without success and advised the Respondent's guarantor that they would attend the property to deal with this issue.

22. On arrival the property was found to be fully furnished and insecure and because the Applicant's property managers did not hold a spare key, they changed the lock and made the Respondent and his guarantor aware that this had been done and the reasons for the lock being changed.

23. The Respondent was advised around the time the property lock was changed that he could collect a key for the property from the Applicant's property managers' office but he did not attend to pick it up and a number of attempts were made to meet him at the property with a key but he did not attend on any of these occasions.

24. On or about the beginning of March 2022 the Respondent advised the Applicant's property managers that he had left the property and would not be returning and that any items remaining at the property could be removed and disposed of.

25. The Respondent is in breach of clause 8 of the tenancy agreement by failing to pay rent over a number of months during the tenancy.

26.The Respondent is in breach of clause 17 of the tenancy agreement, the duty to take reasonable care of the let property and by some means allowed the property to remain insecure for a number of days in November 2021.

27.Rent arrears accrued at the property are in the sum of £2617.30 after deduction of £578 claimed from the tenancy deposit and attributed to rent arrears

28.The sum of £2617.30 is lawfully due by the Respondent to the Applicant.

Reasons for Decision

29.The Tribunal noted that the Respondent had entered written representations regarding his position on this application but despite knowing about the application had for whatever reason failed to enter appearance at any of the case management discussions. The Tribunal did not accept his claim that he had paid rent to the landlord or the guarantor and it was clear that when rent was paid by him it had been paid direct to the property managers as stated in the tenancy agreement. The Respondent sought to argue that the rent was not due after the lock at the property was changed but the Tribunal did not accept this assertion. By some means the Respondent had allowed the property to remain with an open door and insecure for some days and the property managers had been alerted to this and had tried to contact him without success and had advised his guarantor they would attend. In the view of the Tribunal, they had little option but to secure the property in the absence of a spare key given that he had apparently allowed it to be left insecure. A number of arrangements had been made to meet him at the property to give him the key, but he had failed to keep to these arrangements. If the Respondent had decided to cease to occupy the property without giving notice this did not relieve him of his obligation to pay the rent which was due in terms of the agreement. The Respondent's position was inconsistent with a letter he submitted to the Applicant's property managers some months later when he said he had left without mentioning anything about the key. The tribunal had no hesitation in fining that the rent arrears had accrued in this tenancy agreement and were lawfully due by the Respondent to the Applicant.

Decision

The Tribunal determined that a payment order be made against the Respondent and in favour of the Applicant in the sum of Two Thousand Six Hundred and Seventeen Pounds and Thirty Pence Only (£2617.30)

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.

V. Bremner

Legal Member/Chair

_____ 21.7.23 _____
Date