



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/20/1565

Re: Property at 163 Harbour Place, Dalgety Bay, Fife, KY11 9GG (“the Property”)

Parties:

Sheila Stewart, C/O Moo-let dot com, Suite 4 Preston House, 7 Preston Crescent, Inverkeithing, KY11 9JN (“the Applicant”)

Mr Andrew Jenkins, 163 Harbour Place, Dalgety Bay, Fife, KY11 9GG (“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 for the amount of £3,573.62 with interest of 8% per annum from the date of this decision should be granted.

Background:

This is an application for a payment order in terms of S 71 (1) of the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act).

The Applicant is seeking payment of arrears of rent and fees incurred for drafting of a Notice to Leave for the tenancy entered into by the parties for the property commencing on 1 February 2019. The application under rule 111 The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (the rules) as amended by the email from the Applicant's representative of 16 September 2019 seeks an order for payment of £3,573.62.

The notification for the CMD on 8 October 2020 to the Respondent was served by Sheriff Officers on 10 September 2020. The Tribunal was thus satisfied that the Respondent had received sufficient notice of the CMD.

The following documents had been sent as evidence by the Applicant:

1. Scottish Private Residential Tenancy Agreement commencing 1 February 2019
2. rent statements for the periods 9.1.2020 to 16.7.2020 and 9.1.2020 to 10.9.2020
3. copy invoice for £123.62 from Gilson Gray dated 31 July 2020 for drafting Notice to Leave for the property
4. copy Notice to Leave for the property dated 22 July 2020
5. Track and Trace evidence of service of the amendment request and accompanying documents on the Respondent sent 17 September 2020 and signed for received 21 September 2019

The Case Management Discussion

The Tribunal formally allowed the amendment of the amount stated in the application in terms of Rule 14A of the rules as per the amendment request of 16 September 2020. The Tribunal was satisfied from the Track and Trace evidence lodged by the Applicant that this had been intimated to the Respondent as required in terms of said rule more than 14 days prior to the CMD.

Only the Applicant's solicitor Mr Crombie, took part in the CMD held by telephone. There had been no representations made by the Respondent and the Respondent did not participate in the call. The application thus proceeded as undefended.

He advised that the Respondent continues to reside in the property although he had now been served with a Notice to Leave, which has to date no expired. The arrears of rent remain outstanding.

He referred to the Tenancy Agreement Clause 8 paragraphs 6 and 7 as the contractual provisions on which the request for payment order for of the legal fees and the request for the order for payment interest of 8% per annum are based.

The Tribunal makes the decision on the basis of the written evidence lodged by the Applicant and the information given at the hearing by the Applicant's representative.

Findings in Fact (Clauses referred to below relate to clauses of the tenancy agreement)

1. The Applicant as landlord and the Respondent as tenant entered into a private residential tenancy agreement for the property commencing 1 February 2019 (Clauses 1,3 and 6)
2. moo-let were acting as letting agent on behalf of the Applicant (Clause 2)
3. The tenancy is ongoing.
4. Rent of £575 per month is payable monthly in advance (Clause 8)
5. As at 10 September 2020 the Respondent was in arrears of rent of £3,450.
6. The Applicant incurred further legal fees of £123.62 as per the invoice from Gilson Gray to Moo-Let dated 31 July 2020
7. As at the date of the hearing these sums remain outstanding.
8. In terms of the tenancy agreement, interest may be charged by the landlord at the rate of 8% per annum (Clause 8)

Reasons for Decision

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.

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

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.

1. The Respondent did not make any written representations and did not attend the CMD. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case.
2. The Applicant is entitled to payment of rent of £575 per calendar month in advance. As per the rental statements lodged, £3,450 rent arrears for the property had accrued as of 10 September 2020 and remain outstanding.
3. Due to the Respondent's failure to pay rent the Applicant incurred reasonable costs of legal fees to the amount of £123.62.
4. In terms of the tenancy agreement the Applicant is entitled to interest payments at the rate of 8 % per annum. In terms of Rule 41A of the rules these are running from the date of the decision.

Decision

The Tribunal grants an order against the Respondent for payment of the sum of £3,573.62 and makes an order for payment of interest thereon at the rate of 8% per annum from the date of the decision until payment.

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.

P Hennig-McFatridge

Petra Hennig McFatridge
Legal Member/Chair

8 October 2020
Date