



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

Chamber Ref: FTS/HPC/CV/23/0219

Re: Property at 95 Maitland Hogg Lane, Kirkliston, EH29 9DU (“the Property”)

Parties:

Mr Neil Guthrie, 25 Baird Drive, Edinburgh, EH12 5SB (“the Applicant”)

Mr Dawid Smolarek, formerly residing at 95 Maitland Hogg Lane, Kirkliston, EH29 9DU and now residing at 95 Maitland Hogg Lane, Kirkliston, EH29 9DU and Magdalena Cygankiewicz , formerly residing at 95 Maitland Hogg Lane, Kirkliston, EH29 9DU and whose present whereabouts are unknown (“the Respondents”)

Tribunal Members:

Jim Bauld (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order should be granted for payment in the sum of TEN THOUSAND, EIGHT HUNDRED AND SIXTY POUNDS (£10,860.00) against the first named Respondent , Dawid Smolarek

Background

1. By application dated 20 January 2023, the applicant sought an order under section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) and in terms of rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

2. on 9 February 2023, the application was accepted by the Tribunal and referred for determination by the tribunal
3. A Case Management Discussion (CMD) was set to take place on 5 April 2023 and appropriate intimation of that hearing was given to all parties

The Case Management Discussion

4. The Case Management Discussion (CMD) took place on 5 April 2023 via telephone case conference. The applicant was personally present. The respondents were not in attendance and were not represented.
5. The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters. The tribunal asked various questions with regard to the application and the documents lodged in support of it. The applicant confirmed that he wished the tribunal to grant the order sought in the application only against the first named respondent, Dawid Smolarek.

Findings in fact

6. The Applicant and the Respondents as respectively the landlord and tenants entered into a tenancy of the property which commenced on 19 April 2019
7. The tenancy was a private residential tenancy in terms of the Act
8. The agreed monthly rental was £790
9. Rent arrears had accrued at 28 December 2022 amounting to £10,860.00
10. Appropriate accounting had been provided in respect of the outstanding rent with the application to the tribunal.

Reasons for Decision

11. The tribunal accepted the unchallenged evidence presented on behalf of the applicant regarding the outstanding sums. The tribunal noted that the respondents had failed to engage with both the applicant and with the tribunal despite having ample opportunity to do so.
12. The sum claimed when the application was lodged was £10,860 being the arrears accrued as at 28 December 2022.
13. The tenancy had ended on 21 March 2023. At that date the applicant indicated that arrears stood at £12,221.34. The applicant agreed that he had

not intimated to the respondents any formal request to amend the sum claimed and thus the tribunal was not able to make any award beyond the initial sum claimed in the application.

14. The tribunal noted that the applicant wished the payment order to be granted against only the first named respondent Dawid Smolarek. He did not wish to obtain an order against the second named respondent Magdalena Cygankiewicz. He stated that she had left the tenancy a number of years ago
15. He indicated that the tenancy had now been ended and that the first named respondent was now living in the adjacent property at 93 Maitland Hogg Lane.
16. The tribunal also exercised the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD.

Decision

The order for payment of the sum of £10,860.00 is granted against Dawid Smolarek only

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.

Jim Bauld

5 April 2023

Legal Member/Chair

Date