



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) arising out of a tenancy under Section 32 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/CV/20/1203

Re: Property at 87 Carnegie Hill, East Kilbride, G75 0AQ (“the Property”)

Parties:

Mr Alistair Spence, 22 Fairlie, East Kilbride, G74 4SE (“the Applicant”)

Mr Marc Crute, 87 Carnegie Hill, East Kilbride, G75 0AQ (“the Respondent”)

Tribunal Members:

Susan Christie (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order be granted for Payment by the Respondent to the Applicant in the sum of £2166.99, with interest at the rate of 8% per annum from today’s date being 19 August 2020, until payment.

Background

1. The application for payment of unpaid rent due was received by the Tribunal on 25 May 2020.
2. The Notice of Acceptance of the Application by the Tribunal is dated 9 June 2020.
3. On 27 July 2020, a letter was sent to the Parties intimating the day and time of the Case Management Discussion and providing accompanying information.
4. On 28 July 2020 Sheriff Officers served a copy of the letter from the Tribunal dated 27 July 2020 on the Respondent, specifically drawing his attention to the Case Management Discussion assigned for 19 August 2020 by way of conference call. The mode of service being by way of personal service.
5. The letter itself sets out the details of the application made and invites the Respondent to make written representations to the Tribunal; highlights to the Respondent that the Tribunal may do anything at a Case Management

Discussion which it may do at a Hearing including making a decision on the application; and that if he did not participate in the Case Management Discussion, this would not stop a decision or order being made by the Tribunal if the Tribunal considers that it has sufficient information before it to do so and the procedure has been fair.

6. Unfortunately, the time of the conference call was erroneously stated in the original correspondence as 8am. Therefore, further intimation was made to the Parties advising them that the conference call time was to be 11.30 on the same date. Intimation upon the Respondent was made by letter dated 4 August 2020 and was sent by recorded delivery post. A track and trace report produced showed it had been signed for on 5 August 2020.
7. Written representations were due to be lodged by the Respondent by 17 August 2020. No written representations were lodged.

The Case Management Discussion (CMD) 19 August 2020 (conference call)

8. The Applicant's Representative Ms Fraser participated by conference call. An Observer Ms Robb was with her.
9. The Respondent did not participate. I was satisfied proper intimation of the date and time had been made on the Respondent. I proceeded in his absence.
10. All documents lodged in support of the application were examined and discussed.
11. An updated Rent Statement lodged with the Tribunal on 4 August 2020 showed the rent arrears had increased at the last rent debit (posted on the ledger on 5 July 2020) to £2466.99. A payment of £300 had been made by the Respondent (posted on 10 July 2020) of £300 which left a running total figure due of £2166.99. This had been crossed over by the Applicant's Representative to the Respondent on 4 August 2020 by e mail. I received that e mail late, having been satisfied that she had not lodged it timeously due to erroneous advice she had received from a third party.
12. The Applicant is seeking a payment order to enforce against the Respondent for the sum of £2166.99.
13. From the paperwork produced, the Short Assured Tenancy between the Parties commenced on 14 October 2016 until 15 April 2017 and continued monthly thereafter. It recurs on the 15th of every month until such times as it is terminated. Currently I am advised, the tenancy has not yet terminated as there was a defect in an earlier Notice to Quit. The rent of £495 per calendar month is due to be paid in advance. It was explained that the rent payment date had in practical terms been moved. Therefore, the rent charge posted on 5 July 2020 covers the future month's rent as it is paid in advance.
14. Interest is sought in addition on the unpaid sum in line with the contractual terms.
15. In terms of Clause 3 of the Short Assured Tenancy Agreement 'interest shall be payable on outstanding sums at the rate of 8% per annum.'
16. No Time to Pay Application had been received by the Tribunal from the Respondent.

Findings in Fact

- I. The Short Assured Tenancy (SAT) between the Parties commenced on 14 October 2016 until 15 April 2017 and continued monthly thereafter. It recurs on the 15th of every month until such times as it is terminated.
- II. The tenancy is ongoing.
- III. The rental due under the SAT is £495 per calendar month due on 15th of every month in advance.
- IV. The outstanding rent due and owing by the Respondent to the Applicant for the period up to 15 August 2020 is £2,166.99.
- V. Contractual interest is due on the unpaid rent at the rate of 8% per annum from today's date.

Finding in Fact & Law

- VI. The sum of £2,166.99 is due and resting owing by the Respondent to the Applicant and an Order for Payment is made in that sum along with interest at 8% per annum from today's date until paid.

Reasons for Decision & Decision

The contractual terms of the SAT entitle the Applicant to recover from the Respondent unpaid rent due. I was satisfied that the paperwork produced, and the oral information given evidenced that unpaid rent is due and owing. The Parties entered into a Short Assured Tenancy Agreement (SAT). The tenancy is ongoing. The rental due under the tenancy agreement is £495 per calendar month due on or before 15th of every month. The outstanding rent due and owing by the Respondents to the Applicant, after deduction of payments made is £2,166.99. The paperwork also disclosed a contractual right to interest at 8% per annum.

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.

Susan Christie
Legal Member/Chair

19 August 2020
Date

