



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

Chamber Ref: FTS/HPC/CV/20/1741

Re: Property at 9/5 Stuart Crescent, Edinburgh, EH12 8XR (“the Property”)

Parties:

Mr Lendrick Gillies, 132 St Johns Road, Edinburgh, EH12 8AX (“the Applicant”)

Mrs Amanda Burgen and Mr Malcolm Burgen, residing together formerly at 9/5 Stuart Crescent, Edinburgh, EH12 8XR; 9/5 Stuart Crescent, Edinburgh, EH12 8XR (“the Respondents”)

Tribunal Members:

Andrew Cowan (Legal Member) and Mike Scott (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the sum sought by the Applicant as rent arrears of £15,070.36 was lawfully due from the Respondent’s and granted in order for payment of that sum by the Respondents to the Applicant.

Background

- 1. The Applicant submitted an application dated 12 May 2020 in which he sought payment of the total sum of £14,052.00 from the Respondents. The Applicant relates to rent arrears accrued by the Respondents in terms of a Short Assured Tenancy Agreement between the parties in relation to the Property. The tenancy between the parties commenced on 1 November 2016 and terminated on 1 October 2020.**
- 2. On 14 October 2020 the Tribunal held a Case Management Discussion (“CMD”) in relation to the application. At that time the Tribunal were concerned that they did not have a full accounting of the rental account which covered the full period of the tenancy between the parties. The**

Tribunal accordingly directed the Applicant to produce a full rent account for the full period of the tenancy between the parties.

- 3. A further CMD was held by the Tribunal on 16 December 2020. By that date the Applicant's had lodged three rent ledgers in relation to various periods of the Respondents occupancy of the Property. The cumulative total rent showing as due and owing (according to these ledgers) was £15,070.36. In lodging these rent ledgers the Tribunal was satisfied that the Applicant had complied with the terms of the Direction issued by the Tribunal in relation to that matter.**
- 4. At the CMD on 16 December 2020 the Respondents admitted that they were due rent arrears to the Applicant, but continued to dispute that they were liable for the full sum as claimed by the Applicant.**
- 5. The Tribunal fixed a full evidential hearing in relation to the application for 1 March 2021.**
- 6. The Tribunal also directed the Respondent's that they were required to provide the Tribunal with:**
 - a. A list of the entries on the rent statements (as lodged by the Applicant on 9 December 2020) which the Respondents dispute.
 - b. A note of any additional payments which the Respondents claim were made to the Applicant, and which are not otherwise disclosed on those rent statements, and
 - c. A total sum which the Respondents believe they are due to pay by way of rent arrears for the period from 31 October 2017 to the date of termination of the tenancy, together with a note of how the Respondents have calculated that total sum.
- 7. By email dated 16 December 2020 the solicitor acting on behalf of the Applicant requested the Tribunal to amend the sum claimed to the amended sum of £15,070.36. The Tribunal accepted the application as an application under rule 14(A) of Tribunal rules of procedure.**
- 8. By email dated 9 February 2021 the Respondents requested a postponement of the hearing fixed for 1 March 2021. The Tribunal were satisfied that the Respondent had shown good reason why an adjournment was necessary and proceeded to adjourn that Tribunal hearing and a new Tribunal hearing was fixed for 1 April 2021.**
- 9. By email dated 25 March 2021 Messrs J3 Debt Solutions Limited advised the Tribunal that the Respondents were declared bankrupt by awards of sequestration issued by the Accountant in Bankruptcy on 19 March 2021. J3 Debt solutions wrote to the Tribunal on behalf of the Trustee in bankruptcy and confirmed that they were aware of the hearing fixed for 1 April 2021 and that it was not the intention of the Trustee to attend that hearing.**

10. By email dated 24 March 2021 the Applicant's legal representative lodged an Inventory of Productions which included relevant rent statements and the Tenancy Agreement between the parties, together with a list of witnesses.
11. By a further email dated 25 March 2021 the Applicant's legal representative lodged a second list of documents which included case summaries of entries in the Register of the Accountant in Bankruptcy, confirming the sequestration of both of the Respondents.

The Hearing and Reasons for Decision

12. A hearing in relation to the Application took place by telephone conference on 1 April 2021. The Applicant was represented on the conference call by his solicitor Mr Crombie. The Respondents did not join the hearing. The Respondents had not made any further written representations to the Tribunal in advance of the hearing and had not lodged any further documents in compliance with the Direction of the Tribunal issued on 16 December 2020. The Tribunal were satisfied that the Respondents were aware of the hearing, having had the date (and instructions for joining the conference call) sent to them by email and letter.
13. By email dated 26 March 2021 the Respondents had requested the Tribunal not to disclose their current address. The Tribunal noted, however, that the Respondents current address was publicly available on the documentation received in relation to the Respondents sequestration. The Tribunal accordingly took no further action in relation to the Respondents' request in this respect, as their current address was available on the publicly accessible website of the Accountant in Bankruptcy.
14. At the hearing the Applicant's solicitor confirmed that the Applicant continued to seek an order for payment. The Tribunal considered, and granted, the Applicant's request dated 16th December 2020 to increase the sum claimed to £1570.36. The Tribunal granted this amendment in accordance with rule 14 (A) of the Tribunal Rules of Procedure, having been satisfied that the Applicant's request in this respect had previously been intimated to the Respondents by email at least 14 days prior to the hearing in relation to this matter.
15. The Applicant had lodged rent statements which demonstrated that outstanding rent was due by the Respondents to the Applicant in relation to their occupancy of the Property, in terms of the Tenancy Agreement between the parties. The total rent due by the Respondents to the Applicant as at the date of termination of the tenancy (being 1 October 2020) was £15,070.36.

16. At previous CMDs the Respondents had indicated that they believed further payments had been made to the rent account by them. The Respondents had not, however, responded to a Direction to provide details of any further payments made. The Respondents did not attend at the hearing in relation to the application and no further submissions were received from the Respondent's in relation to their averments in this respect.

Findings and Fact in Law

17. The Applicant let the property to the Respondent in terms of a written Tenancy Agreement dated 1 November 2016. The Tenancy Agreement states in Clause 4 that the rent payable in terms of the Tenancy Agreement was £900 per month.

18. The Respondents have accrued rent arrears under the terms of their Tenancy Agreement in relation to the property in the sum of £15,070.36.

19. The rent arrears accrued by the Respondents between 1 October 2017 and 1 October 2020.

20. The sum of £15,070.36 by way of rent arrears remains unpaid by the Respondents as at the date hereof.

Decision

21. The Tribunal accordingly granted an order for payment by the Respondent's to the Applicant in the sum of £15,070.36.

Expenses

22. The Applicant's solicitor made an application for expenses in terms of rule 40 of the Tribunal Rules of Procedure.

23. Rule 40 (1) of the Tribunal Rules specifies as follows:

"(1) The First-tier Tribunal may award expenses as taxed by the Auditor of the Court of Session against a party but only where that party through unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense."

24. The Applicant's solicitor submitted the Respondents behaviour had been unreasonable in the conduct of the case. Specifically the Applicant's solicitor submitted that:

a. The Tribunal had issued Directions to the Respondents in December 2020. The Respondents had not complied with the terms of those Directions.

- b. The Respondents had not attended the hearing at today's date and hadn't advised either the Applicant or the Tribunal that they did not intend to proceed with their rebuttal of the application.**
 - c. The Respondents should have notified the Applicant, and the Tribunal of the sequestration proceedings and the award of sequestration. Had they done so, the Applicant would have avoided the cost and time of preparation for this hearing in relation to the application.**
 - d. The Applicant had attempted to resolve the claim by extra judicial means, but the Respondents had failed to respond to the Applicant's communications in that respect.**
- 25. The Tribunal adjourned to consider the Applicant's motion for expenses. Having adjourned the Tribunal issued its decision to refuse the application for expenses.**
- 26. In refusing the application for expenses the Tribunal had regard to the decision of the Upper Tribunal for Scotland in the case Ariel Rameirez Stitch and Lesley and Anne Strachan – UTS/AP/19/0026. The Tribunal considered the motion for expenses using the three stage process identified within that decision. The first stage of the process was to determine whether there was unreasonable behaviour in the conduct of the proceedings. In addition, the Tribunal had regard paragraph 20 of the reported case, where the Upper Tribunal highlighted that "when evaluating the conduct of those who appear before the FTT, standards ought not to be set at an unrealistic level. In particular, caution should be exercised before lack of skill on the part of an unqualified representative is characterised as unreasonable conduct. ..."**
- 27. Proceedings before the FTT are also subject to the overriding objectives set out in paragraph 2 of the 2017 rules.**
- 28. Having regard to all of the circumstances of the matter the Tribunal are not persuaded that the Respondents actions in this case amounted to unreasonable behaviour. The Respondent's had attended the first two CMD hearings and represented themselves. They sought to advance arguments at an early stage that some additional rent had been paid whilst also accepting that a large part of the claim was due. Although the Respondent's had not complied with the terms of the Direction issued by the Tribunal in December 2020 that in itself is sufficient to establish their behaviour was unreasonable. Extra judicial discussions between the parties were not matters which the Tribunal were prepared to take in to account in considering the motion for expenses as those discussions were not matters raised during the conduct of the case.**
- 29. The Respondents were sequestered and a Trustee appointed by the Accountant in Bankruptcy. It is perhaps, therefore, not surprising that the Respondent's decided to take no further part in the proceedings after the date of their sequestration.**

30. Having considered the matter that the Tribunal are not persuaded the Respondent has, through unreasonable behaviour in the conduct of the case, put the Applicant unnecessary or unreasonable expense. The application for expenses fails the first test set out in the Upper Tribunal decision referred to in paragraph 26 above. In reaching this decision the Tribunal recognise that unrepresented parties may be unfamiliar with the substantive law or of the Tribunal procedures and their conduct was certainly not deliberately designed to incur additional expenses for 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.

Andrew Cowan

1st April 2021

Legal Member/Chair

Date


