



Decision 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/21/2045

Re: Property at 11 Heathlands Park, Kinellar, Aberdeen, AB21 0SG (“the Property”)

Parties:

Mr Kenneth Marshall, 9 Heathlands Park, Kinellar, Aberdeen, AB21 0SG (“the Applicant”)

Mr Darren Bell, Ms Kim Downie, 11 Heathlands Park, Kinellar, Aberdeen, AB21 0SG (“the Respondents”)

Tribunal Members:

Valerie Bremner (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order in the sum of Twenty One Thousand Four Hundred and Ninety Five Pounds Only (£21,495) be made in favour of the Applicant and against the Respondents.

The decision of the Tribunal was unanimous.

Background

1. This is an application for a payment order in terms of Rule 111 of the Tribunal Rules of Procedure. The application was first lodged with the tribunal on 24 August 2021. It was accepted by the Tribunal on 27 August 2021 and a case management discussion was fixed in respect of the application for 1 October 2021. A related eviction application (FTT/HPC/EV/21/1722) also called for a case management discussion on 1 October 2021.

The Case Management Discussion

2. At the case management discussion on 1 October 2021 the Applicant was represented by Mrs Moira Marshall and Ms Christine Marshall, mother and daughter. They are involved in the family business Craigmear Properties, which is a partnership between the Applicant Mr Kenneth Marshall and Mr Charles Marshall which exists to manage the family's rental property portfolio.
3. There was no appearance at the case management discussion by or on behalf of the Respondents. Ms Christine Marshall requested that the Tribunal proceeded in their absence. The Tribunal noted that papers for both Respondents had been served by Sheriff Officers who had deposited both sets of papers in the letterbox at the property. The Tribunal was satisfied that both Respondents had received the application and supporting papers with reasonable notice of the case management discussion. In the circumstances the Tribunal was prepared to proceed in the absence of the Respondents.
4. The Tribunal had sight of the application, a tenancy agreement, a sheet outlining rent payments made and outstanding payments, email correspondence with the Tribunal, a simplified sheet setting out outstanding rental payments together with three letters from the owners of the property giving consent for the landlord to lease properties on their behalf.
5. Ms Marshall advised the Tribunal that the Respondents had entered into a private tenancy agreement with Mr Kenneth Marshall, her father, a partner in Craigmear Properties, with effect from 1 June 2019 with a monthly rent payable of £1095. Ms Marshall could not advise the Tribunal if the Respondents were employed or self-employed at the start of the tenancy but was able to say that for the first few months of the tenancy the rent was paid. Arrears started to develop in November 2019 and between December 2019 and the start of August 2021 rent had only been paid for the months of January 2020 and July 2021. Ms Marshall indicated that it was understood that the Respondents lived at the property with three school-age children. She was aware that since early in 2020 when the arrears started to build up, emails were sent, phone calls were made and letters sent to the Respondents. She indicated that Respondents had spoken to Mr Kenneth Marshall the landlord promising to pay the arrears saying that they would be seeking help to pay the rent. A cheaper rental property had been offered to them in an effort to assist them but despite all attempts to secure rental payments from the Respondents nothing was forthcoming. The outstanding rent as of 1 August 2021 when the application was made to the Tribunal was £21,495.
6. Ms Marshall and her mother Mrs Marshall also advised the Tribunal that they understood that the Respondents might be leaving the property as they had been observed packing up as if to leave and on the morning of the case management discussion a text been received to the effect that the keys would be returned by early in the next week. No attempt had been made by the Respondents to communicate with either Mr Kenneth Marshall the landlord or any member of the Marshall family involved in the business regarding payment of the rent arrears.
7. Ms Marshall indicated that the arrears had built since before Covid 19 restrictions were put in place and she felt that the family had made a number of efforts to assist the Respondents but all these have been unsuccessful leaving them no choice but to apply to the tribunal for a payment order.

Findings in Fact

8. The Respondents entered into a private residential tenancy at the property with the Applicant with effect from 1 June 2019.
9. The monthly rent for the property was £1095 per month, payable on the first of the month.
10. Rental payments were made by the Respondents in the first few months of the tenancy until rent arrears started to build in November 2019.
11. Between December 2019 and the beginning of August 2021 only two months' rent were paid by the Respondents and rent arrears accumulated to the extent of £21,495.
12. The Applicant together with a number of his family members communicated with the Respondents by email, by telephone, face-to-face and in writing regarding the arrears but these attempts to recover the rent arrears were unsuccessful.
13. The sum of £21,495 is lawfully due by the Respondents to the Applicant in relation to rent arrears arising from the tenancy at the property.

Reasons for Decision

14. The Tribunal was satisfied that substantial rent arrears had accumulated at the property and various attempts had been made by the Applicant and other members of his family involved in the family business to recover the rent arrears without any success. It therefore appeared reasonable to grant a payment order in the circumstances.

Decision

The Tribunal granted a payment order in the sum of £21,495 to be paid by the Respondents to 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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons

for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

Valerie Brmner

Legal Member/Chair

1.10.21

Date