



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/CV/22/0404

Re: Property at 4 Rhynd Farm Cottage, Rhynd Farm, Leuchars, KY16 0DR (“the Property”)

Parties:

JLW Foster and Co., Craigie Farm, Leuchars, Fife, KY16 0DT (“the Applicant”)

Mr Jon Aitken, 4 Rhynd Farm Cottage, Rhynd Farm, Leuchars, KY16 0DR (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment by the Respondent in the sum of £1,950 should be made in favour of the Applicant.

Background

1. By application received 9 February 2022, the Applicant sought a payment order against the Respondent in the sum of £1,950 in respect of rent arrears. Supporting documentation was submitted with the application, including a copy of the tenancy agreement and a rent statement.
2. The application was subsequently accepted by a Legal Member of the Tribunal acting with delegated powers from the Chamber President who issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations on 18 March 2022. Notification of the application was then made to the Respondent and the date, time and arrangements for a Case Management Discussion (“CMD”) were

intimated to both parties, advising of the date by which any written representations should be lodged (26 April 2022). Said notification was served on the Respondent personally by Sheriff Officer on 7 April 2022. No representations were lodged by the Respondent.

Case Management Discussion

1. A Case Management Discussion (“CMD”) took place by telephone conference call on 23 May 2022 at 2pm, attended by the Applicant’s Mr Edward Foster and Ms Lisa Monteith only. Mr Foster presented the case for the Applicant, with Ms Monteith as a supporter only, being a staff member who was involved in the management of this Property. The start of the CMD was delayed for 5 minutes to allow an opportunity for the Respondent to join late but he did not do so.
2. After introductions and introductory remarks, the Applicant was asked to address the application and confirmed that he was still seeking a payment order against the Respondent in respect of rent arrears amounting to £1,950 in terms of the application. He advised that the monthly rent was £650 and the figure sought represented 3 months’ rent arrears incurred from November 2021. The background was that the Respondent was found to be operating a business from the Property which he was not entitled to do in terms of the lease so it was a breach of contract. A Notice to Leave was served on this ground at which point the Respondent stopped paying rent. In terms of the Notice to Leave, the Respondent had until 21 May 2022 to leave the Property but he vacated early, without notifying the Applicant when he was vacating. The Applicant does not know the exact date the Respondent vacated but thinks it was just into March 2022. Correspondence was issued to the Respondent regarding the rent arrears. Initially, the Respondent was in response and offered something like payments of £10 per month but no payments were ever forthcoming.
3. Reference was made to the Rent Statement which had been lodged with the Tribunal. It was noted that it showed a final rent arrears balance of £2,600, with 4 months’ rent having been unpaid at the end of the tenancy. The last payment received from the Respondent was £650 on 1 November 2021. It was confirmed that no further payments have been received since. The Legal Member asked about the deposit of £650 mentioned in the lease and showing as having been paid on the Rent Statement at the commencement of the tenancy. The Applicant confirmed that they have received this back from the tenancy deposit scheme and it is being held pending the Applicant quantifying repairs required following the Respondent vacating. The Applicant stated that the Respondent left the Property in a terrible condition and that they estimate repair costs of several thousand pounds which they intend to pursue by way of separate application. The deposit will be applied to the repair costs. The Respondent did not challenge the release of the deposit to the Applicant through the scheme.
4. The Applicant would like the payment order granted today.

Findings in Fact

1. The Applicant company is the owner and landlord of the Property.
2. The Respondent was the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 5 August 2020.
3. The Respondent vacated the Property in or around March 2022.
4. The rent in respect of the tenancy was £650 per calendar month.
5. The rent was paid regularly by the Respondent until in or around November 2021 when the Respondent was served with a Notice to Leave.
6. The final payment towards rent was made by the Respondent on 1 November 2021 which covered the rent due for October 2021.
7. No further payments have been made by the Respondent.
8. When the application was made to the Tribunal, the rent arrears amounted to £1,950, representing rent owed for the three months from November 2021.
9. The rent arrears owing at the termination of the tenancy amounted to £2,600.
10. The Applicant sought payment from the Respondent on several occasions towards the rent arrears but no further payments have been made by the Respondent and no acceptable payment proposals made.
11. The tenancy deposit of £650 has been recovered by the Applicant and is to be applied to repair costs to the Property for which the Applicant holds the Respondent liable. There will be no balance left of the deposit to apply towards the rent arrears.
12. The Respondent has not submitted any written representations, nor sought time to pay, in respect of this application. The Respondent did not attend the CMD.
13. The sum sought in terms of the application of £1,950 is due and resting owing by the Respondent to the Applicant in respect of rent arrears incurred during the tenancy and has not been paid by the Respondent.

Reasons for Decision

1. The Tribunal considered all of the background papers, including the application and supporting documentation and the oral submissions made by the Applicant at the CMD. The Tribunal noted that no representations had been made by the Respondent and that he did not attend the CMD, having been properly and timeously notified of same. The Tribunal considered that there was nothing to contradict the information from the Applicant and therefore no requirement to continue the application to an Evidential Hearing. The Tribunal was satisfied

that, in the circumstances, a payment order in terms of the application could properly be made at the CMD.

2. The Tribunal was satisfied from the information before it that the sum of £1,950 in unpaid rent is due and resting owing by the Respondent and that an order for payment in that sum should accordingly be made.

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.

Nicola Weir

Legal Member/Chair

23 May 2022

Date