



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/22/4216

Re: Property at North Lodge, Elie, KY9 1JT (“the Property”)

Parties:

Elie Estate Trust, Elie Estate, Elie, KY9 1ER (“the Applicant”)

Mr Andrew Duncan, North Lodge, Elie, KY9 1JT (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member) and Leslie Forrest (Ordinary Member)

Decision

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Order for Payment against the Respondent in favour of the Applicant in the sum of £8,440.

Background

1. The Applicant submitted an application under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The Applicant sought an order for payment in respect of rent arrears said to have been incurred by the Respondent.
2. A case management discussion (“CMD”) took place on 28 March 2023. A Note summarising the CMD was issued along with a Notice of Directions on 3 April 2023.
3. On 13 April 2023, the Tribunal received submissions and supporting documents from the Applicant’s representative in compliance with the Notice of Direction.

4. On 3 May 2023, the Tribunal received further representations from the Applicant's representative.
5. On 26 June 2023, the Tribunal received an updated rent statement from the Applicant's representative.

The case management discussion

6. The CMD took place by conference call. The Applicant was represented by Mrs Thomson and the Respondent participated personally. This case called alongside a related case which proceeds under chamber reference FTS/HPC/EV/22/4215.
7. The Tribunal observed that the Respondent had failed to comply with the Notice of Direction issued on 3 April 2023. The Respondent said that he was unaware of any requirement on him to comply with a direction. The Tribunal Clerk confirmed that the Notice of Direction was sent to the Respondent by recorded delivery post and was signed for on 5 April 2023. The Tribunal noted from the updated rent statement lodged that the arrears of rent have increased to £8,440. The Applicant's representative moved to amend the sum sued for to £8,440 and sought an order for payment in that sum.
8. The Respondent's position was that his property has been damaged as a result of the condition of the property and the value of his property exceeds the value of rent arrears. He indicated that his property has been damaged by dampness and mould. In response to questions from the Tribunal, the Respondent on one occasion said that he has not been keeping the rental payments in a separate account and on another occasion was not prepared to say whether he was keeping the rent in a separate account. When asked whether he had taken advice, the Respondent explained that he had spoken to a solicitor and was told to make further contact after today's CMD.

Findings in Fact

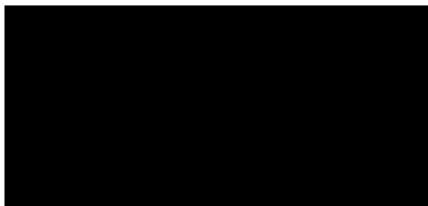
9. The parties entered into a short assured tenancy which commenced 1 September 2017.
10. The contractual payments due in terms of the tenancy were £705 per month, in advance.
11. The contractual payments increased to £715 with effect from September 2020.
12. The contractual payments increased to £750.50 with effect from October 2022.
13. The arrears due by the Respondent amount to £8,440.

Reasons for Decision

14. The Tribunal proceeded on the basis of the documents lodged in support of the application and the submissions made at the CMD. There was no material before the Tribunal which supported a challenge to the rent statement lodged. The Tribunal was not persuaded that the Respondent was entitled to withhold payment of rent. The Tribunal granted the Applicant's motion to increase the sum sued for to £8,440, which sum is reflected in the updated rent statement lodged, and thereafter granted an order for payment in that sum.

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.



Legal Member/Chair

27 June 2023

Date