



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/21/0030

Re: Property at Flat 7, 24 Crathes Way, Dundee, DD5 3BY (“the Property”)

Parties:

Mr Simon Doig Gordon, 4 Montague Street Broughty Ferry, Dundee, DD5 2RB (“the Applicant”)

Mr Nigel Smith, Flat 7, 24 Crathes Way, Dundee, DD5 3BY (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent is in breach of the tenancy agreement with the Applicant and has failed to pay rent. The Tribunal accordingly has decided to make an order for payment in the sum of SIX THOUSAND POUNDS (£6000) STERLING. The order for payment will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.

Background

1. By application dated 5 January 2021, the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for payment of rent arrears under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
2. The application was accompanied by a copy of a Short Assured Tenancy between the parties, an AT5 and a rent statement to 1 January 2021.

3. On 19 January 2021, the Tribunal accepted the application under Rule 9 of the Regulations 2017.
4. On 12 February 2021 the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 17 March 2021. The Respondent required to lodge written submissions by 4 March 2021. This paperwork was served on the Respondent by Vivienne Johnstone, Sheriff Officer, Dundee on 12 February 2021 and the Execution of Service was received by the Tribunal administration.

Case Management Discussion

5. The Tribunal proceeded with the Case Management Discussion on 17 March 2021 by way of teleconference. The Applicant was represented by Mr Kemp from Messrs Thorntons, Solicitors. There was no appearance by or on behalf of the Respondent despite the teleconference starting 10 minutes late to allow the Respondent plenty of time to join. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in his absence.
6. The Tribunal had before it the Short Assured Tenancy Agreement between the parties, the AT5 and a rent statement to 1 January 2021.
7. The Application was heard together with the Applicant’s action for eviction under case reference FTS/HPC/EV/21/0029. The Applicant’s solicitor had lodged three letters to the Respondent dated 27 October, 12 November and 7 December 2020 formally seeking the payment of rent and advising the Respondent where he could seek advice and assistance in the context of that action which were also considered by the Tribunal.
8. Mr Kemp moved the Tribunal to grant the amendment to increase the sum sought from £4800 to £6000 which had been intimated on the Respondent on 1 March 2021. He moved for an order for payment for £6000 with interest. Mr Kemp submitted that the Respondent had had sufficient time to make representations in response to the Applicant’s application to amend.
9. The Tribunal noted that in terms of Clause 2 of the tenancy agreement the Respondent had agreed to pay a monthly rent of £600 per month. With reference to the rent statement Mr Kemp pointed out there had only been 2 payments towards rent in the last year, the last one being in September 2020 and that the last time there had been a zero balance was in December 2019. He explained that the Tribunal had already granted an Order for payment for £2400 as set out in the Application. The Respondent had not engaged in that process and had not paid the arrears. The arrears were increasing and equated to 14 months arrears, the total arrears being £8400. Mr Kemp submitted that his client had made informal approaches to the Respondent in relation to the payment of arrears and that Messrs Thorntons when formally instructed had sent 3 formal letters to the Respondent on 27 October, 12

November and 7 December 2020 with regard to the arrears, but there had been no response from the Respondent.

Findings in Fact

10. The Applicant and the Respondent agreed by way of Short Assured Tenancy Agreement dated 30 August 2011 in relation to the Property that the Respondent would pay the Applicant a monthly rent of £600.
11. The Respondent has fallen into arrears of rent. The Applicant has an Order for payment for payment granted by the First-tier Tribunal for Scotland (Housing and Property Chamber) on 5 August 2020 for £2400.
12. The Respondent has fallen into further arrears. He has not made any payments towards rent since September 2020 when he paid £600. The arrears as at 5 January 2021, the date of application, were £7200. Arrears have increased to £8400.

Reasons for Decision

13. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the submissions made by Mr Kemp. The Tribunal was satisfied that the Applicant had complied with Rule 14(A) of the Regulations and that the sum sought be increased from £4800 to £6000.
14. Thereafter the Tribunal noted the content of the rent statement lodged which showed the Respondent had last had a zero balance on his account in December 2019. The Tribunal noted that since then the Respondent had made two £600 payments to account the last one being on 1 September 2020 and that no further payments had been made. The Applicant produced evidence of persistent non- payment of rent with reference to the tenancy agreement and the rent statements lodged. The Respondent had not disputed the application. A previous Order for payment had been granted. The Tribunal was satisfied on the basis of these documents, together with the Applicant's submissions that the order for payment in favour of the Applicant be granted.
15. In relation to the Applicant's motion that interest be awarded in terms of Rule 41(A), the Tribunal noted that there was no provision for interest in the tenancy agreement. The Tribunal on balance was not prepared to award any interest in the circumstances.

Decision

16. The Tribunal granted an order for payment of £6000.

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.

S. E

17 March 2021

Legal Chair

Date