



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/22/1083

Re: Property at 9 Laberge Gardens, Motherwell, ML1 4FD (“the Property”)

Parties:

Lewis George MacFadyen, 13 North Street, Motherwell, ML1 1LQ (“the Applicant”)

David Walker, 9 Laberge Gardens, Motherwell, ML1 4FD (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it should make an order for payment for the sum of FOUR THOUSAND FOUR HUNDRED AND EIGHTY POUNDS AND EIGHTEEN PENCE (£4,480.18) STERLING

Background

1. An application was made to 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 2017 Rules”) seeking an order for payment in relation to unpaid rent.
2. The application contained:-
 - a copy of the tenancy agreement
 - rent statement

- title sheet
3. The Applicants' representative, Mrs Hogg from Stodarts LLP, appeared on behalf of the Applicant. There was no appearance by the Respondent. Trainee solicitor Lewis Dobbie was observing.
 4. Notice of the Hearing and the application had been served on the Respondent by sheriff officers on 29 June 2022. As we were satisfied that the Respondent had been served with notice of today's hearing we were therefore prepared to proceed with this hearing in his absence.

Discussion

5. The tribunal considered papers which had been lodged in support of the application, including the tenancy agreement and rent account statement.
6. The applicant's representative advised the current level of arrears were now in fact £5640.18. She advised that the respondent had made full payments until 28 March 2021 and thereafter there had been around three full months payments missed. The letting agent had contacted the local authority and had arranged to have housing benefit paid direct to the landlord, this had been in place since June 2021. The housing benefit did not however meet the full rent due and there was an ongoing shortfall in payments as shown in the rent statement provided.
7. She advised the landlord and letting agent had tried to contact the tenant to get him to make payments towards the arrears however this had not led to any payments being made to the arrears or rent shortfall.
8. The Applicant's representative moved for interest to be awarded. She advised that this property had been left to the applicant as his inheritance after his father had passed away. It was to be used to support him financially. He is currently at university and to date the property has been of limited financial benefit to him and the arrears have been to his financial detriment. Interest on the award would assist in addressing this deficit.
9. The Applicant confirmed she was seeking an order for payment for £4,448.18.

Findings in Fact

10. The Tribunal found the following facts established:-
11. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 28 July 2020.
12. The tenancy was for the property 9 Laberge Gardens, Motherwell.
13. The tenant is David Walker.
14. The landlord is Lewis MacFadyen.
15. Clause 8 of the Tenancy Agreement provides that the rent for the property is £650 per calendar month. It is payable in advance and due on the 28th of each month.
16. There were rent arrears outstanding at the date of the application, namely £4480.18.
17. There appeared to be rent arrears outstanding at today's date totalling £5640.18.

Reasons for Decision

18. Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 provides that the First Tier Tribunal has jurisdiction in relation to civil proceedings arising from private residential tenancies. As this tenancy is a private residential tenancy we are content that we have jurisdiction to deal with this case.
19. The tenancy agreement created obligations between the parties, which included paying rent. The Respondent had failed to make full payment of his rent. There was submitted a rental statement showing the arrears due. The Applicant's agent submitted that the Respondent was in breach of the condition of the tenancy agreement regarding payment of rent. There was evidence in support of the claim. The payments being made to rent were made from benefits paid direct from the housing benefit section of the local authority. The tenant had made no effort to pay the short fall or the arrears.

20. On the basis of the evidence submitted and having regard to all papers submitted including the application, we consider that we should make an order for the sum sued.
21. We were also asked to award interest in terms of our discretionary right to do so under rule 41A of the tribunal rules. The amount of interest sought in the claim was unspecified. The claim was not based on any contractual interest due in terms of the lease. We note that there are rent arrears for the property and we accept that there are sums due to the applicant. We note however that the respondent is in receipt of benefits. We do not understand that he has any other income. While we accept that the applicant is disadvantaged by the respondent's failure to pay sums due, we consider on balance that the impact of awarding interest on sums due against the respondent may be particularly detrimental to him, having regard to the current economic pressures affecting people, especially those on low incomes. Furthermore, there is no provision for interest to be sought in the tenancy agreement, and we consider that the parties were free to negotiate such a term, but chose not to do so. We are not therefore persuaded that it is reasonable to award interest in this case. Accordingly, we refuse to make an award for interest in this case.

Decision

22. We grant an order in favour of the Applicant for FOUR THOUSAND FOUR HUNDRED AND EIGHTY POUNDS AND EIGHTEEN PENCE (£4,480.18) STERLING against the Respondent.

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.

Melanie Barbour

09/08/2022

Legal Member/Chair

Date