



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/22/0529

Re: Property at 58 Flat 4 (2F1), Portobello High Street, Edinburgh, EH15 1DA (“the Property”)

Parties:

Scottish Midland Co-operative Society Limited, Hillwood House, 2 Harvest Drive, Newbridge, EH28 8QJ (“the Applicant”)

Mr Andrew Ness, 3/1 25 Trongate, Glasgow, G1 5EZ (“the Respondent”)

Tribunal Members:

Jan Todd (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 of the sum of £2,248.36 be granted in favour of the Applicant from the Respondent.

- **Background**

1. This was the first case management discussion (CMD) in respect of an application by the Applicant dated 9th March 2022 for an order for payment of arrears of rent from the Respondent who was the Tenant in a Tenancy of the Property from the Applicant.

The following documents were lodged with the application:-

- A copy of a Tenancy Agreement dated 13th October and commencing 15th October 2021 between the Applicant as Landlord and the Respondent who was the Tenant.
- Statement of rent arrears dated 22nd February showing a sum outstanding as of £1948.36

2. The case management discussion (CMD) proceeded today by way of teleconference.
3. Service was validly affected on the Respondent by Service by Sheriff Officers who served the papers on the Respondent on 14th April 2022 by letterbox service having discovered the Respondent has a new address and having served it there.
4. The Tribunal sent a direction asking for clarification of the rent due in respect of the pro rata amount for the final period and to ask whether the deposit had been claimed and if so what for.
5. The Applicant responded to the direction on 4th May 2022 confirming the pro rata rent of £298.36 was in respect of the sum due from 28th January to the last day of the tenancy on 7th February 2022. The Applicant also advised they were claiming the full amount of the deposit for damage and cleaning required at the Property.
6. The Applicant then intimated by written submission from their solicitors dated 11th May that they wished to seek an increase in the sum claimed to add in reasonable legal costs as per an invoice from Gilson Gray their solicitors for £300 bringing their total claim to £2,248.36. This is based on clause 37 of the lease. This submission was crossed over to the Respondent.

- **The Case Management Discussion**

1. The CMD took place by teleconferencing and the Legal Member waited until 14.10 to see if the Respondent was going to join the call. The Respondent did not join and was not represented at the CMD. The Respondent has not lodged any written submissions for the Tribunal to consider.
2. The legal member made introductions and explained the purpose and order of proceedings also advising that the Tribunal could make a decision after a CMD which it could after a hearing if satisfied it was appropriate to do so.
3. The Applicants were represented by Mr David Alexander from Gilson Gray solicitors who attended on the call. There was no-one in attendance from the Applicants themselves. The legal member considered it appropriate to continue with the CMD given that intimation had been given to the Respondent and he has not responded in writing or requested any postponement of today's CMD.
4. Mr Alexander explained that he was seeking an order for payment of the amended sum claimed namely £2,248.36 representing rent arrears due and unpaid by the Respondent of £1,948.36 up to the date the Respondent left the Property which he confirmed was 7th February and the additional sum of £300 for reasonable legal fees as per the invoice lodged on 11th May 2022. Mr Alexander submitted that his request to increase the sum claimed has been timeously made and that reasonable legal fees can be requested in terms of clause 37 of the lease signed by the Respondent.
5. He advised that the Respondent has not made any contact or offer to pay the rent arrears which accrued from 28th November until the date he left and that the Property was left in a mess and as a result the full amount of the deposit has been successfully claimed by the Applicants and has been

put towards the cleaning and redecoration of the Property to get it ready to be relet.

Findings in Fact

1. The parties entered into a lease of the Property in the form of a Private Residential tenancy which commenced on 15th October 2021.
2. The Rent due in terms of the lease is £825 per calendar month payable in advance
3. The Respondent had left the property on 7th February 2022.
4. The rent outstanding at 7th February 2022 is £1,948.36
5. The Applicant has incurred additional fees of £300 in pursuing these arrears
6. The Deposit of £925 has been reclaimed by the Applicants for cleaning and damage to the Property and is therefore not available to reduce the arrears of rent.

• Reasons for Decision

7. The parties have entered into a lease where the Respondent has leased the property from the Applicant and has agreed to pay £825 per month in rent.
8. The Respondent has failed to pay the full rent due. The Respondent has not paid the rent due for 28th November 2021, 28th December 2021 and from 28th January 2021 to 7th February 2021. The tenant left on 7th February and the Applicant is seeking payment up to that date. The rent due and owing to 7th February is £1,948.36
9. In addition the Applicants via their solicitor have timeously intimated a request to increase the sum sought to add in the cost of legal fees incurred to date in bringing this action. An invoice for £300 including of VAT has been lodged confirming legal fees of this sum have been charged to the Applicant for advice given and representation for this application. Given the terms of clause 37 of the lease which states "The landlord will be entitled to pursue the tenant for any reasonable costs incurred as a result of the Tenant's failure to pay rent on time including but not limited to any charge for returned cheques or any reasonable costs incurred in pursuing the Tenant for payment of unpaid rent. The recovery of reasonable legal costs and expenses if determined as appropriate could also be sought from the tenant". The landlord has incurred legal costs as a result of pursuing the tenant for unpaid rent as evidenced by the invoice provided and the Tribunal finds this to be a reasonable cost incurred by the Respondent's failure to pay rent.
10. The Respondent was served notice of this application by sheriff officer on 14th April 2022 and has not made any written representations or attended this CMD. The Applicants submitted a request to increase the sum sought on 11th May, along with an invoice for legal fees and this has been copied to the Respondent so the Tribunal finds that the Applicant has successfully intimated a request to increase the sum due.
11. The Tribunal accepts the written evidence and verbal statements made by the Applicant's representative who the Tribunal found clear and credible in his evidence that rent is outstanding and remains unpaid and that the Applicant has incurred reasonable legal costs in raising this action and is entitled to recover these in terms of clause 37 of the lease. In the absence of any

representations from the Respondent the Tribunal finds it fair and appropriate to make an order for payment for the amended sum today. There being no application for time to pay the Tribunal makes an order for payment of the sum claimed.

- **Decision**

An order for payment of the sum of £2,248.36 is granted.

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.

J Todd

Legal Member/Chair

Date 30th May 2022