



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/20/0867

Re: Property at Flat 16, Jordon House, Nairn, IV12 4BP (“the Property”)

Parties:

Mr Allan Thornton, 5 Braeface, Alness, Highland, IV7 0QP (“the Applicant”)

Mr Duncan Connolly, Flat 16, Jordon House, Nairn, IV12 4BP (“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 £5,920 is granted with interest at the rate of 3% from the date of the decision

- Background

This was the first case management discussion (CMD) in respect of an application by the Applicant dated 8th February 2020 for an order for payment of arrears of rent and other sums arising from an alleged breach of contract against the Respondent who was the Tenant in a Tenancy of the Property from the Applicant.

The following documents were lodged with the application:-

1. A copy of the Tenancy Agreement dated 27th April and 29th May 2019 between the Applicant as Landlord and the Respondent who was the Tenant.
2. Statement of rent arrears showing a sum outstanding as at 29th February 2019 of £4,200.

1. The Application was accepted acceptance by a legal member of the Tribunal dated 13th May 2020.
2. Due to the Covid 19 pandemic the case management discussion (CMD) could not be scheduled until today's date. The CMD proceeded today by way of teleconference due to the requirement at the current time for social distancing.
3. Service was validly effected on the Respondent by Service by Sheriff Officers who served the papers on the Respondent on 21st July 2020.

- **The Case Management Discussion**

4. The CMD took place by teleconferencing and the Legal Member waited until 10.10 to see if the Respondent was going to join the call. The Respondent did not join and was not represented at the CMD.
5. The Applicant attended in person and was not represented.
6. Mr Thornton confirmed that there have been no further payments of rent since he raised the application and confirmed the Respondent is still resident in the Property. He advised that in his last conversation with the Respondent the Respondent advised he was not going to pay any rent although he appeared to have some benefits paid to him.
7. The Applicant confirmed, as noted in the rent statements lodged with the application and the two subsequent rent statements sent in by the Applicant with a request to increase the sum claimed, that the sum outstanding as at 29th June 2020 is £5920. The Applicant advised that the Respondent has only paid the first month's rent and then a further £100 in May 2019 and has not paid anything since then. The Applicant confirmed he was seeking an order for rent arrears of £5920 although further rent will now be due.
8. The Legal Member asked about the other items the Applicant was claiming costs for namely the cost of replacement locks and a locksmith and cost of a replacement carpet. The Applicant advised that he has replied to a direction from the Tribunal on this matter and that he was seeking payment of the costs of a locksmith and the cost of a replacement carpet as he was sure the Respondent would not leave without sheriff officers having to evict him and therefore the locks would have to be changed. The sum claimed, which is around £350, he averred was a fair amount for replacement locks and the cost of the locksmith. With regard to the carpet he advised that he believes the Respondent has ground dirt and food into the carpet such that it will not be able to be cleaned. The Applicant indicated he wanted to claim the cost of these items as the deposit which is £430 will not cover other costs which he anticipates will be incurred such as cleaning and redecoration at an estimated total cost of around £1100.
9. Finally the Applicant is seeking interest and expenses of the application and the Legal Member explained the Tribunal rules about interest which is that the Tribunal does not have the power to grant interest at a judicial rate of 8% but can consider interest at a rate it considers reasonable. With regard to expenses the Legal Member explained the criteria for claiming expenses and that this has to involve unreasonable behaviour on the part of the Respondent in the conduct of the case.

Findings in Fact

1. The parties entered into a lease of the Property which commenced on 29th April 2019
2. The Rent due in terms of the lease is £430 per calendar month payable in advance
3. The tenant is still living in the Property.
4. The rent outstanding at the date of the application was £4,200 and at 29th June is £5,920.
5. The Applicant notified the Tribunal of his request to amend the sum claimed by e-mail dated 2nd July 2020 with an updated rent statement. This, along with the rest of the Application was served on the Respondent by Sheriff Officer on 21st July
6. No sums of rent have been paid since May 2019.
7. The Deposit of £430 has not been reclaimed by the Applicants as the tenant is still living in the Property.
8. No locks have been changed nor has the carpet been replaced.
9. The Applicant has requested interest on any sum granted and the Tribunal finds interest due at 3% on the rent outstanding.

• Reasons for Decision

10. The parties have entered into a lease where the Respondent has leased the property from the Applicant and has agreed to pay £430 per month in rent.
11. The Respondent has failed to pay the full rent due and in particular has not paid anything towards the rental sums since paying only £100 on 31st May 2019.
12. No further sums have been paid.
13. The Tribunal accepts the written evidence and verbal statements made by the Applicant, who the Tribunal found clear and credible in his evidence that the rent outstanding as of July 2020 amounts to £5920. This sum has been intimated on the Respondent. In the absence of any response from the Respondent the Tribunal finds it fair and appropriate to make an order for payment for that sum today.
14. With regard to the claim for the cost of replacement locks and a locksmith the Tribunal finds that this claim and the one for the replacement carpet are premature. The Applicant assumes that he will require to replace the locks but he cannot know this until the Respondent leaves the Property. An order for eviction under a separate application has been granted today. It is unknown today if a locksmith and replacement locks will be required therefor the claim for this item is premature and the Legal Member explained it cannot be considered or granted today. Equally it is unknown what costs in respect of damage may or may not be incurred when the tenant leaves the Property, until then it is premature to consider any claim for a replacement carpet as even if it were not able to be cleaned (which is not proven today) the deposit may cover the costs of said replacement as it is unknown what other costs if any the Landlord may claim.
15. The Applicant indicated that he would withdraw the other claims just now and just seek the order for payment of the rent arrears.

16. The Legal Member advised that with regard to the request for interest the Tribunal had no authority to apply judicial interest at 8% but could apply, if requested which the Applicant has done, a reasonable rate of interest which the Tribunal found to be a rate of 3%.
17. The Applicant was also seeking expenses but the Legal Member explained that expenses can only be granted when the Respondent has been found to have put the other party to unnecessary or unreasonable expense through their unreasonable behaviour in the conduct of the case. (rule 40 of the Tribunal's Rules) As there was no evidence averred of any unreasonable conduct on the part of the Respondent, who has not engaged in the Tribunal process at all, the Tribunal has no grounds on which to consider making any award of expenses.
18. There being no application for time to pay the Tribunal makes an order for payment of the sum as amended claimed.

- **Decision**

- An order for payment of the sum of £5,920 is granted with interest at the rate of 3% from the date of the decision.

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.

Jan A Todd

Legal Member/Chair _____

Date: 17th August 2020