



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/20/0212

Re: Property at 65 Eglinton Drive, Eaglesham, Glasgow, G76 0LA (“the Property”)

Parties:

SJM Properties Ltd, Parkwoodhill, Cheapside Street, Eaglesham, Glasgow, G76 0NS (“the Applicant”)

Mr Mark Shields, Mrs Connie Shields, 65 Eglinton Drive, Eaglesham, Glasgow, G76 0LA (“the Respondents”)

Tribunal Members:

Melanie Barbour (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

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 of the sum of £2885.16 to the Applicant in relation to rent arrears due by the Respondents and costs incurred amounting to £240.
2. The application contained:-
 - a copy of the tenancy agreement
 - rental statement
 - deposit statements
 - bank statements

- estate agent's landlord statement and deposit statement
3. The Applicant had submitted further paperwork in support of his Applicant including rent statements; copies of correspondence to the Respondents advising them of the amount of rent arrears and seeking repayment; and invoices from his legal agents. The Respondents had also submitted written representations dated 28 February 2020 setting the reasons their response to the application.
 4. Mr Molina for the Applicant, and Mr and Mrs Shields, the Respondents, all appeared at today's case management discussion (CMD).
 5. This application had been continued from a previous CMD which had taken place on 14 July 2020. At that case management discussion I had allowed the Applicant to amend the sum sought to £8645.16 in rent arrears and £1062 in legal costs. The Respondents had not appeared at that CMD. An award for rent and legal expenses was granted. Thereafter a review request was made by the Respondents as they indicated that they had not received notification of the CMD. I granted the review request and recalled the Order for Payment. I issued a Direction at the time of the Review seeking a written note from the Respondents of their up-to-date position.
 6. No response was received in response to the Direction issued to the Respondents. They indicated that they did not believe that they had to submit further information and further, they had in any event previously put in written representations.
 7. The Applicant had emailed the Respondents and the Tribunal office additional papers on 29 July 2020 providing information on the current level of rent arrears for the property. The Respondents confirmed that they had had received these documents.

Discussion

8. The Applicant advised that the Respondents were still living at the property, despite an order being granted for eviction against the Respondents on 26 February 2020.
9. The Applicant advised that the rent arrears were still outstanding and now totalled £9,193.55. This figure included payment for continued unauthorised occupancy due to today's date, 13 August 2020.
10. The Applicant sought recovery of the sum of £9,193.55 in relation to unpaid rent and unauthorised occupancy. I noted that the Applicant had emailed the Respondents on 29 July 2020 advising them of the current level of arrears and seeking payment. I was prepared to amend the sum sought for unpaid rent and unauthorised occupancy to £9,193.55.

11. The Applicant advised that he also sought legal costs totalling £1062. I noted that in terms of the tenancy agreement the Applicant was entitled to “reasonable legal costs”.
12. The Applicant advised that the rent arrears and legal costs were still outstanding as at today’s date and an order for payment was sought for both sums.
13. The Respondents advised that they were not disputing that the rent arrears were due. They advised that they agreed that the sum of £9,193.55 was outstanding and due. They were not opposing the order sought for rent arrears. They advised however, that they did not consider that legal costs were due and they opposed an order sought for legal expenses. They submitted that the Applicant was an experienced landlord and should not require legal advice for recovery of rent arrears. Further, they did not dispute that they owed the rent arrears. They advised that they had previously informed the Applicant the method that they would pay the rent arrears. They had followed police advice about not paying the rent arrears direct to the Applicant. They had contacted the Property Bureau to arrange to make payment of rent direct to them instead of direct to the Applicant however the Property Bureau had not got back in touch with the Respondents to enable them to make the rent payments. They also advised that they had had problem with standing orders being paid by their bank and this has led to issues with payments as well. For these reasons they disputed the application for payment of legal costs.
14. The Applicant advised that he considered that he was entitled to these costs, there was provision in the tenancy agreement for costs, including reasonable legal costs. He disputed that the police had given the advice to the Respondents; he disputed that rent payments should be made to the Property Bureau; he disputed the efforts alleged to have been made by the Respondents to put that payment arrangement in place. He considered as a landlord, in order to ensure that he discharged his duties properly, seeking legal advice for this matter was reasonable action to take and in accordance with the provisions in the tenancy agreement.
15. I considered that there were two distinct matters for which payment was sought by the Applicant; (first) rent and occupancy arrears; and (Second) legal costs. The Respondents had advised that they were not disputing the rent and occupancy arrears due. The Respondents did dispute the legal costs sought. Given that the parties were in dispute over the second matter, I considered that the application in it’s entirety would require to be sent to a hearing for the second matter to be determined with evidence being led. If the application was sent to a hearing, then no order could be granted at this CMD, as I am not entitled to grant a partial order for payment. I considered that the Applicant was entitled to seek an order for rent and occupancy arrears today if he withdrew that part of his application that sought legal expenses. The Applicant confirmed that he sought a payment order for rent and occupancy arrears at today’s CMD; and he withdrew that part of his application dealing with legal costs.

Findings in Fact

16. The Tribunal found the following facts to be established:
17. A tenancy agreement was entered into between the Applicant and the Respondents for the property. It commenced on 27 August 2018.
18. An order for eviction had been granted by the First Tier Housing and Property Chamber on 26 February 2020. The order specified that the private residential tenancy ended on 30 March 2020.
19. Clause 8 in the tenancy agreement provided that monthly rent was £1000. Rent was payable in advance. Rent was payable on the 27th of each month.
20. The rent account statement showed amounts due each month, amounts received, and rent outstanding and showed arrears as at 13 August 2020.
21. That the Respondents had continued to occupy the subjects after the private residential tenancy ended on 30 March 2020. That their occupancy was unauthorised.
22. That there been no payments to rent or in respect of the unauthorised continued occupancy of the subjects since 28 October 2019.
23. That rent arrears and payment in respect of the unauthorised continued occupancy of the subjects totalled £9,193.55.

Reasons for Decision

24. 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.
25. As this tenancy is a private residential tenancy I am content that I have jurisdiction to deal with this case.
26. The tenancy agreement created obligations between the parties; one of those obligations was to pay rent the Respondents had failed to do so.
27. I considered the copy of the eviction order showing that the tenancy came to an end on 30 March 2020. I noted that after this date the Respondents had continued to reside in the subjects without the permission of the Applicant. Their continued occupation was unauthorised. The Respondents are required to pay for their continued unauthorised occupancy of the subjects. I consider that costs equalling the former monthly rental payment due by the Respondents' was an appropriate sum for their continued unauthorised occupancy.

28. The Respondents appeared at today's CMD and advised that they were not disputing the order for rent and occupancy arrears which was sought by the Applicant. They confirmed that they accepted that arrears of £9193.55 were due.
29. Accordingly, I found that rent and costs for the unauthorised occupation of the subjects totalling £9,193.55 was due and owing to the Applicant by the Respondents.
30. As the Applicant withdrew that part of his application which seeks reasonable legal costs I make no findings and grant no order in respect of that matter as it is no longer before me having been withdrawn.
31. On the basis of the evidence submitted and having regard to all papers submitted including the application, I consider that I should make an order for £9,193.55.

Decision

32. I grant an order in favour of the Applicants for the Sum of NINE THOUSAND ONE HUNDRED AND NINETY THREE POUNDS FIFTY FIVE PENCE (£9,193.55) STERLING against the Respondents.

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
Legal Member/Chair**

**17 August 2020
Date**