



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/19/1183

Re: Property at 21 Craigard Road, Callander, FK17 8DN (“the Property”)

Parties:

Mr Garth Pearson, C/O Martin and Co, 14 King Street, Stirling, FK8 1AY (“the Applicant”)

Mr Craig Macdonald, 21 Craigard Road, Callander, FK17 8DN (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondent)

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 in relation to rent arrears due by the Respondent together with interest at 8% per annum.
2. The application contained:-
 - a copy of the tenancy agreement, and
 - rental statement
3. Ms Beryl from Messrs Hill Robb appeared on behalf of the Applicant. There was no appearance by the Respondent.

4. Notice of the Hearing had been served on the Respondent by sheriff officers on 19 June 2019. As I was satisfied that the Respondent had been served with notice of today's hearing, I was prepared to proceed with today's hearing in his absence.

Hearing

5. The Applicants' agent referred me to the papers which had been lodged in support of the application, including the tenancy agreement, and rent account statement. This application related to unpaid rent due in terms of that agreement.
6. The Respondent had failed to make regular rental payments since November 2018. There had been one payment on 18 December 2018, however she advised that this, had in fact, been made by the Respondent's guarantor. There had been no further payments since 18 December 2018. The Applicant's letting agents had attempted to contact him about the arrears however they had been unsuccessful in getting him to engage with them.
7. The Applicant's agent referred to the rent account submitted with the application. She advised that the current level of arrears had gone up since the rent account had been submitted however she had instructions to seek the sum originally claimed for, namely £2125.
8. The Applicants' agent advised that the rent arrears were still outstanding as at today's date. There had been no further payments towards the rent arrears by the Respondent other than as set out in the rental statement lodged with the application.
9. She advised that she also sought interest on the sum claimed. She sought interest of 8% per annum, she submitted that this was reasonable as it was the judicial rate of interest which she would be entitled to in a court; the tenant had failed to pay his rent and this had led to considerable loss by the landlord, including that he had had to instruct solicitors for these proceedings and this would incur him in additional cost. She considered that it was therefore just to award 8% interest.

Findings in Fact

10. The Tribunal found the following facts to be established:
11. A tenancy agreement was entered into between the Applicant and the Respondent for the property and existed between the parties. It was entered into on 2 November 2018.
12. Clause 8 in the tenancy agreement provided that monthly rent was £525 and the rent payment date was 2nd of each month. Clause 8 of the tenancy agreement provided that monthly rent was due in advance.

13. That the rental statement showed amounts due each month, amounts received, and rent outstanding.
14. That the rent arrears outstanding as at 2 April 2019 were £2125.
15. There had been no payments towards the rent since 18 December 2018.
16. That there were rent arrears outstanding as at 25 July totalling at least £2125.

Reasons for Decision

17. 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.
18. As this tenancy is a private residential tenancy I am content that I have jurisdiction to deal with this case.
19. There was no response or appearance from the Respondent but he had been notified of today's hearing.
20. The tenancy agreement created obligations between the parties, one of those obligations was to pay rent, and the Respondent has failed to do so. There was submitted a rental statement showing the arrears due and additional information provided today by the Applicant's agent was that there had been no further payments towards the rent arrears since December 2018.
21. In relation to the interest sought. I am prepared to make an order for interest however not at the rate of 8% as I do not consider that it would be just to do so. Rule 41 A of the 2017 Tribunal Rules provides that the first tier tribunal "may" include interest when making an order and accordingly, I consider that I have discretion in making any award of interest. I require to have regard to the overriding objective of the first tier tribunal as set out in Rule 2 of the 2017 Tribunal Rules, and that is to deal with these proceedings justly. I am persuaded that it would be just to award interest, as I agree that the landlord has suffered loss in not having rent paid to him. I do not consider that his losses are considerable, rent has only been outstanding since December 2018, had he had the opportunity to invest the rent income due to him he would not have been able to recoup interest at the rate of 8%. While he may have to instruct legal advisors in this case, this is quite common and foreseeable when undertaking a business activity such as renting out property and, I do not consider that the interest should be awarded to repay legal costs. It would appear to me to be unjust to award interest at a higher rate against the Respondent.
22. 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 the sum sued for and award interest at a rate of 2% per annum.

Decision

I grant an order in favour of the Applicant for TWO THOUSAND ONE HUNDRED AND TWENTY FIVE POUNDS (£2,125.00) 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

Legal Member/Chair

25. 7. 19

Date