



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)

Chamber Ref: FTS/HPC/CV/19/3901

Re: Property at Flat 1/2, 23 Binnie Street, Gourock, PA19 1JT (“the Property”)

Parties:

Mr Dario Antonino Cacioppo, 7 Gleneagles Drive, Gourock, PA19 1HX (“the Applicant”)

Mr Andrew Smith, Flat 1/2, 23 Binnie Street, Gourock, PA10 1JT (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order in favour of the Applicant against the Respondent for payment in the sum of £1,485 should be made.

Background

1. By application submitted on 6 December 2019, the Applicant applied for a payment order against the Respondent in respect of unpaid rent for the Property amounting to £990 as at the date of the application. The Application was submitted on behalf of the Applicant by the Applicant’s representative, Mr Gioacchino Cacioppo, who was acting in terms of a Power of Attorney which was exhibited to the Tribunal.
2. The Tribunal requested further supporting documentation and clarification from the Applicant’s representative, who also intimated an amendment to the application in respect of a further monthly rental payment which had become due meantime in respect of December 2019. This increased the sum sought in terms of the application by £495 to £1,485.

3. On 15 January 2020, a Legal Member of the Tribunal acting with delegated powers from the Chamber President issued a Notice of Acceptance of application in terms of Rule 9 of the Regulations.
4. On 5 February 2020, a copy of the application and supporting documentation was served on the Respondent by Sheriff Officer. The Respondent was notified of the date, time and place of the Case Management Discussion to be held and that any written representations were to be lodged by 24 February 2020. No written representations were lodged by the Respondent.
5. The case called before the Legal Member of the Tribunal for a Case Management Discussion at Glasgow Tribunals Centre on 9 March 2020. The Applicant's representative was in attendance. The Respondent was not in attendance.

Case Management Discussion

6. The Applicant's representative summarised the application, with reference to the bank statements lodged in support of the application. He explained the background to the situation. He advised that the tenancy commenced in 2016 and there were initially no payment problems. However, the rent then fell into serious arrears. The Applicant's representative explained that there was a previous Tribunal application in respect of rent arrears, in respect of which the Applicant was granted a payment order in the sum of £4465.79 in March or April 2019. Sheriff Officers are now involved in enforcing that debt and the Applicant's representative showed the Legal Member documentation from Sheriff Officers which confirmed that a Charge was served on the Respondent on 10 February 2020 in respect of the earlier debt.
7. In respect of the current application, the Applicant's representative stated that the sum claimed related to rental payments which have fallen due since the previous Tribunal order in respect of rent arrears was made. He explained that, although further payments have been made towards ongoing rent, no rental payments have been made for the months of June 2019, November 2019 and December 2019, as per the amended application. He stated that the rent in terms of the lease of £450 per calendar month was increased to £475 approximately 3 years ago and then again to £495 around 13/14 months ago. He indicated that this had been done formally by issuing recorded delivery letters to the Respondent and is evidenced by the fact that the most recent payments in respect of rent made by the Respondent as shown in the bank statements produced are all for £495. The sum sought in terms of the amended application is for 3 months' rent of £495 per month, totalling £1,485.
8. The Applicant's representative made reference to the fact that payments shown in the bank statements of £600, made by the Respondent in May and July 2019 relate to the previous Tribunal proceedings in respect of which time to pay towards the previous arrears was agreed at the rate of £105 per month. The £600 payments shown in the bank statements for May and July 2019 represented the monthly rental payment of £495 plus £105 towards the arrears.

Those were the only two additional payments made by the Respondent in terms of the agreed time to pay arrangement and he has not stuck to this arrangement since, hence the serving of the Charge by the Sheriff Officers referred to above. The Applicant's representative referred the Legal Member again to the Charge documentation served by the Sheriff Officers, which show the figure of £210 having been paid to account and set against the previous debt. Accordingly, the Applicant's representative clarified that the £210 does not fall to be deducted from the debt pursued in terms of the current application.

9. The Applicant's representative confirmed that, since the Tribunal papers were served on the Respondent, payments of rent for January and February 2020 have been made but these just cover the ongoing rent and do not reduce the balance sought in terms of this application.
10. The Applicant's representative confirmed that, in terms of the application, he is also seeking interest to be applied to the outstanding sum at the rate of 8% per annum which the Legal Member noted was the contractual rate applicable to late rental payments in terms of the lease.
11. The Legal Member sought clarification from the Applicant's representative regarding the flat number of the Property which the application has as flat 1/ 2 and which the Sheriff Officers in respect of service of this application on the Respondent confirm. However, the Lease refers to Flat 1/ 1, as does the Applicant's representative in one of his communications with the Tribunal. He confirmed that there has always been some confusion regarding the flat number but he has checked the postal address and it is definitely 1/ 2.
12. There was also discussion concerning the Respondents. Although the application mentions "Mr and Mrs Andrew Smith" as does the lease, the Legal Member explained that the Tribunal has registered the Respondent simply as Mr Andrew Smith as neither the application nor lease provide the full name of Mrs Smith. Service of the papers by the Tribunal has been made on Mr Smith only and, accordingly, any order would have to be in the name of Mr Smith alone. The option was given to the Applicant's representative to continue the case to a later date if he wished to pursue an order against both tenants so that service could be made on Mrs Smith, but he declined. Reference was also made to the lease which provides for joint and several liability for rent, etc.

Findings in Fact

13. The Applicant is the Landlord of the Property.
14. The Respondent is the Tenant and leased the Property from the Applicant by virtue of a lease commencing on 20 February 2016. He and his family still reside there.
15. The rent in terms of the lease was £450 per calendar month, which has increased during the lease to the current amount of £495 per calendar month.

16. There has been a history of rent arrears accruing and broken payment arrangements.
17. The Respondent has failed to make the monthly rental payments due for June, November and December 2019.
18. The rent arrears incurred by the Respondent as at the date of the application, as amended and sought in terms of the application, as amended amount to £1,485.
19. The sum of £1,485 has not been paid by the Respondent and is due and resting owing to the Applicant.

Reasons for Decision

20. The Respondent did not submit any written representations contesting the Applicant's claim and did not attend the Case Management Discussion, having been properly and timeously notified of same. The Legal Member was satisfied from the information contained in the application and supporting documentation, including the copy lease, together with the oral submissions made by the Applicant's representative at the Case Management Discussion that the sum claimed in respect of unpaid rent of £1,485 is due by the Respondent and remains outstanding.
21. The Legal Member therefore concluded that the matter does not require to go to an evidential hearing and that an order for payment in the sum of £1,485 could properly be made at the Case Management Discussion.
22. The application also sought an award of interest of 8% on the sum claimed. The contractual rate of interest in terms of the lease was 8% and the Legal Member accordingly considered this the appropriate amount of interest to apply in this case.

Decision

23. The Legal Member accordingly determines that an order for payment by the Respondent of the sum of £1,485 should be made in favour of the Applicant.

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.

Nicola Weir

Legal Member/Chair

9 March 2020

Date