



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)

Chamber Ref: FTS/HPC/CV/19/2604

Re: Flat 1/2, 41 Seedhill Road, Paisley, PA1 1SD (“the property”)

Parties:

Mr Edward Swan, and Mrs Anne Swan, 11 Wolfe Avenue, Newton Mearns, Glasgow, G77 6TQ

(“the applicants”)

Mr Kenneth Storer, Current Address Unknown

(“the respondent”)

Tribunal Members:

Adrian Stalker (Legal Member)

Decision (in absence of the respondent)

The Tribunal made an order for payment, by the respondent to the applicant, in the sum of £3,336.46

Reasons for decision

Background

1. This is an application under rule 70 of the schedule to the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Procedure Regulations”). The applicants are the owners of the property. By an agreement executed on 15 December 2016, they let it to the respondent, under a short assured tenancy, in terms of section 32 of the Housing (Scotland) Act 1988.

2. In due course, the respondent fell into arrears of rent. The applicants made an application to the Tribunal under for an order for possession. That was granted on 29 April.

3. In the current application, Mr and Mrs Swann seek an order for payment of the following sums:

- Rent arrears of £2,610.
- A fee of £250 from their letting agents, Countrywide (Slater Hogg & Howison), in connection with pursuing the eviction application before the Tribunal.
- Sheriff Officers' fees of £119.36, for service of the Charge for Removing, and £357.10, for executing the eviction, and changing the locks. These were incurred because the respondent had failed to leave the property until the eviction order was actually enforced by the sheriff officers.

4. The total sum sought in terms of the application was £3,336.46. These sums were vouched by a rent account prepared by the letting agents, and invoices from both Countrywide and Stirling Park.

5. Along with this application, a copy of the parties' tenancy agreement was produced. This contains the following clause, under the heading: "Tenant's Obligations":

2.23 To pay, or be liable to pay, the reasonable costs incurred by the Landlord, or his Agent or professional advisers, in successfully enforcing or remedying a notable or material breach of, or significant failure to comply with, the obligations of the tenant under this agreement.

6. The current application was received by the Tribunal on 20 August 2019. The process of intimation on the respondent proved to be difficult, as his current address is unknown. The application was accepted on 8 November, and a Case Management Discussion ("CMD") was fixed for 7 January 2020.

CMD on 7 January 2020

7. A CMD took place at the Glasgow Tribunals Centre, 20 York Street, Glasgow, at 10am on 7 January 2020. The first applicant attended. As with the previous application for an eviction order, the respondent did participate in the proceedings, and was not present, or represented, at the CMD. The Tribunal had sight of a Certificate of Service on the respondent by Advertisement, indicating that notification of the CMD was carried out on the Chamber Website between 25 November 2019 and 7 January 2020.

8. Mr Swann sought an order for rent arrears, and the costs incurred in obtaining and enforcing the eviction order, as described in paragraph 3 above, and by reference to clause 2.23 of the parties' contract.

9. In the absence of any contradictor, the Tribunal was prepared to accept that the Countrywide Fee, and the Sheriff Officers' invoices, were "reasonable costs incurred by the Landlord...in successfully enforcing or remedying a notable or material breach of, or significant failure to comply with, the obligations of the tenant", under the parties' agreement, being Mr Storer's failure to pay rent. It was also accepted that the level of rent arrears, as indicated in the rent account, was £2,610, and further, the amounts stated in the invoices.

Decision

10. The Tribunal therefore found, in fact and in law, that the applicants were entitled to payment from the respondent of rent arrears in the total sum of £3,336.46. It accordingly granted an order for payment in that sum.

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.

Signed **A Stalker**

Date 7 January 2020