



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

Chamber Ref: FTS/HPC/CV/23/2166

Re: Property at 23 Springfield, Edinburgh, EH6 5SF (“the Property”)

Parties:

Mr Gareth Tao, 24 Kekewich Avenue, Edinburgh, EH7 6TZ (“the Applicant”)

Mr Matthew Hornibrook, Mr Ethan Hornibrook, 23 Springfield, Edinburgh, EH6 5SF (“the Respondent”)

Tribunal Members:

Jim Bauld (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that order should be granted for payment in the sum of Eight thousand, eight hundred and fifty pounds (£8,850.00)

Background

1. By application dated 29 June 2023, the applicant sought an order under section 71 of (“the Act”) and in terms of rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the procedure rules”). On 21 August 2023 the application was accepted by the tribunal and referred for determination by the tribunal.
2. A Case Management Discussion (CMD) was set to take place on 20 October 2023 and appropriate intimation of that hearing was given to all parties
3. The application was heard together with a conjoined application involving the same parties for an eviction order under tribunal reference FTS/HPC/EV/23/2165

The Case Management Discussion

4. The Case Management Discussion (CMD) took place on 20 October 2023 via telephone case conference. The applicant did not take part personally in the telephone case conference but was represented by his solicitor, Ms Lynn Harrison from Beveridge and Kellas, solicitors, Edinburgh.
5. The tribunal then explained the purpose of the CMD and the powers available to the tribunal to determine matters and noted that Ms Harrison was aware of the purpose and powers.
6. The Respondents did not take part. By email dated 18 October 2023, the first name respondent, Matthew Hornibrook had requested that the case management discussion should be postponed and adjourned.
7. He indicated that he was currently temporarily overseas and unable to attend the meeting as he was unable to call the tribunal telephone number from overseas.
8. He sent a further email to the tribunal on the morning of 20 October, indicating that he had not received a response to his request. The tribunal chair requested that an email to be sent to Mr Hornibrook indicating that the tribunal was not willing to postpone based on the information he had so far provided and request him to provide further information confirming where he was, when did he book to go abroad, the reason for his trip, the reason why he was unable to telephone from abroad, and any reason why the request to postpone had only been made less than 48 hours before the tribunal. He was also asked to provide any proposals he had to resolve the matter. No further email was received from Mr Matthew Hornibrook.
9. The tribunal asked Miss Harrison to set out her position with regard to the request for the adjournment. She indicated that she wished the tribunal to proceed with the matter and to make a decision. She indicated that the respondent was making no proposal to deal with the arrears, nor had he provided any reason relating to his inability to take part in the telephone conference call. She also noted that the second respondent Ethan Hornibrook was still living in the property in Edinburgh and he had also not provided any written representation to the tribunal, nor had he attended the telephone case conference.
10. The tribunal was not willing to grant the adjournment requested by the second named respondent. The tribunal notes that rule 28 of the procedure rules gives the tribunal discretion to adjourn or postpone a hearing. That rule states that a party seeking adjournment must show good reason why such an adjournment is necessary and that the tribunal may adjourn on "cause shown"

11. The adjournment request by the respondent contained no reason at all which would justify the granting of the request. The date of the hearing had been intimated to both respondents on 13 September by sheriff officers. Neither of them had provided any written representations nor had they contacted tribunal to advise of any difficulties with attending.
12. The first contact from either of them was the email from Matthew Hornibrook which was sent less than 48 hours before the hearing. That email provided no explanation or reason which demonstrated that either or both respondents were unable to take part in the hearing.
13. The tribunal notes that in terms of its overriding objective, it requires to deal with the proceedings justly and to avoid delay. In light of the failure of the respondents to provide any written representations, or any proper reason for the adjournment request, the tribunal decided to refuse the request.
14. The tribunal therefore decided to continue to hear the application in the absence of the respondents in terms of rule 29 of the procedure rules
15. The tribunal asked various questions of the applicant's solicitor with regard to the application
16. Ms Harrison set out the background to the application which related to extensive rent arrears which had accrued.
17. Arrears had started to accrue in January 2022 and at the date of service of the Notice to Leave amounted to £6,600.00.
18. At the date of the lodging of the application arrears amounted to £8,850.00
19. The tenant had been continuously in arrears from January 2022 until the date of the CMD.
20. The amount of arrears at the date of the CMD was £10,880
21. She advised the tribunal that the respondents had made some payments in September 2023 towards rent and arrears, which were the first payments they had made since June 2023. She advised the tribunal that the landlord's mother, who manages the property on his behalf, had received some recent emails from Matthew Hornibrook. An email of 23 September had indicated that he had made certain payments and that he would shortly be undertaking a business trip to Uganda and Dubai. He indicated that he hoped that trip would allow him to obtain funds to deal with the rent arrears and that the landlord could now be satisfied that ongoing payments will be made.
22. Miss Harrison advised the tribunal that a further email has been sent by Mr Hornibrook on 6 October indicating that he expected to travel to Dubai from Uganda on 8 October and that again he was looking to pay the rental arrears.

However no payments had been made in the last three weeks and arrears were continuing to accrue.

23. No formal proposal to deal with ongoing rent arrears had been made nor had any explanation been tendered to explain the accrual of the extensive rent arrears which existed.

24. The solicitor confirmed that she wished the order for payment to be made. She wished the sum awarded to be £10,880 to reflect the sum outstanding at the date of the CMD. She accepted that the sum of £8,850 was the sum sought in the application and moved the tribunal to amend the sum sought to the higher amount now outstanding.. She accepted that no formal intimation of that specific sum had been given to the respondents. She also asked that any award made should be subject to interest at the judicial rate of 8% per annum as specified in the application..

Findings in Fact

25. The Applicant is the registered owner of the property

26. The Applicant and the Respondents as respectively the landlord and tenants entered into a tenancy of the property which commenced on 18 September 2021

27. The tenancy was a private residential tenancy in terms of the Act

28. The agreed weekly rental was £250

29. Arrears had started to accrue in January 2022 and at the date of service of a Notice to Leave in April 2023 amounted to £6,600.00.

30. At the date of the lodging of the application arrears amounted to £8,850.00

31. The tenant had been continuously in arrears from January 2022 until the date of the CMD.

32. The amount of arrears at the date of the CMD was £10,880

33. Appropriate accounting had been provided in respect of the outstanding rent with the application to the tribunal.

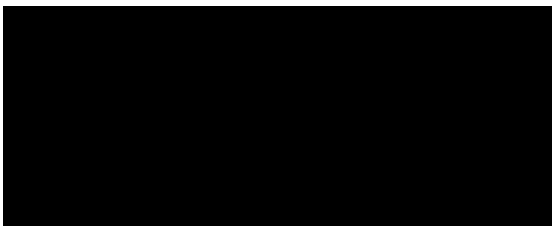
Reasons for Decision

34. The tribunal accepted the unchallenged evidence presented on behalf of the landlord with regard to the rent arrears. A rent statement was produced which set out the history of the arrears. Since January 2022, the respondents had regularly failed to pay the rent as it fell due and significant arrears have accrued. The tribunal noted that the respondent had failed to engage with both the applicant and with the tribunal despite having ample opportunity to do so.

35. The tribunal was not willing to amend the sum claimed. No notice of the proposed increased sum had been properly intimated to the respondents. The tribunal makes a payment order only in respect of the original sum claimed of £8,850. The tribunal accepts the request that the award should be subject to interest at the judicial rate of 8% per annum.

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.



Legal Member

Date: 20/10/2023