



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014 (“the 2014 Act”) and Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/CV/19/3859

Re: Property at 7 Springfield Terrace, Flat TFR, Dunblane, Stirling, FK15 9AA (“the Property”)

Parties:

Mr Peter Aslet and Mrs Linda Aslet, 104 Ravelston Dykes, Edinburgh, EH12 6HB (“the Applicants”)

Grant Property, 14 Coates Crescent, Edinburgh, EH3 7AF (“the Applicants’ Representative”)

Mr Christopher Alexander, 7 Springfield Terrace, Flat TFR, Dunblane, Stirling, FK15 9AA (“the Respondent”)

Tribunal Members:

Susanne L M Tanner Q.C. (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined that the Respondent should pay to the Applicants the sum of ONE THOUSAND NINE HUNDRED AND FIFTY POUNDS (£1950.00) STERLING; and made an Order for Payment in respect of the said sum.

1. Procedural background

- 1.1. The Applicants' Representative made an Application to the tribunal on 28 November 2019 in terms of Section 16 of the 2014 Act and Rule 111 of the 2017 Rules, seeking an order for payment against the Respondent in the sum of £1950.00 in respect of rent arrears to the date of the Application.
- 1.2. The Application documentation submitted by the Applicants' Representative comprised:
 - 1.2.1. A copy of a Private Residential Tenancy Agreement between the Applicants and the Respondent for the Property dated 20 May 2019;
 - 1.2.2. A Notice to Leave to the Respondent dated 24 October 2019;
 - 1.2.3. A Section 11 Notice to the Local Authority;
 - 1.2.4. A Statement of Account for the period to 30 November 2019; and
 - 1.2.5. A signing schedule generated 20 May 2019.
- 1.3. On 5 December 2019 the Application was placed on hold to allow the Applicant to provide further information in relation to a related eviction application EV/19/3860.
- 1.4. The tribunal's administration obtained the Title Sheet for the Property which shows that the Applicants were registered as the co-proprietors on 30 June 2004.
- 1.5. On 18 December 2019, the Application was accepted for determination by the tribunal.
- 1.6. On 27 December 2019, parties were notified of the date, time and place of a Case Management Discussion ("CMD") on 29 January 2020 at 1000h at Wallace House, Maxwell Place, Stirling. The Respondent was invited to submit written representations to the Application by 17 January 2020. On 30 December 2019, the Respondent was personally served by Sheriff Officers with the Application documentation and notice of the date, time and place of the CMD.
- 1.7. No written representations were submitted by the Respondent in advance of the CMD.

- 1.8. On 29 January 2020, a Case Management Discussion was held at Wallace House, Stirling. The Applicants did not attend but were represented by Mr Rory Foote and Ms Diane Simpson from the Applicants' Representative. The Respondent did not attend and was not represented.
- 1.9. The Applicants' Representative sought to amend the sum claimed to £3130.00 which was said to represent the arrears as at the date of the CMD. The Applicants' Representative had not made any prior application in terms of Rule 14A of the 2017 Rules and consequently the Respondent and the tribunal had not received the requisite notice of the proposed amendment. The CMD was adjourned by the tribunal to allow the Applicants to make an application to amend. A Note on the CMD was issued by the tribunal to both parties.
- 1.10. A further CMD was fixed for 20 March 2020. It was thereafter postponed due to the Covid-19 pandemic and parties were notified of the postponement to a date to be advised.
- 1.11. A further CMD was fixed for 9 July 2020. The tribunal Directed that the CMD would take place by teleconference as a result of the ongoing Government restrictions in relation to the Covid-19 pandemic. On 10 June 2020, both parties were notified of the date and time of the CMD and that it would take place by teleconference, with details for joining the call. The notification letter to the Respondent was sent by recorded delivery mail on 10 June 2020. It was received and signed for at the Property by "Alexander" on 13 June 2020.
- 1.12. A letter was sent to both parties on 8 July 2020 together with a Direction confirming the reasons that the CMD was to be conducted by teleconference. It was sent to the Applicants' Representative by email and to the Respondent by mail.

2. CMD: 9 July 2020, Teleconference

- 2.1. Ms Diane Simpson and Mr Andrew Hutton from the Applicants' Representative attended the CMD.
- 2.2. The Respondent did not attend the CMD teleconference or make any contact with the tribunal's administration. The tribunal was satisfied on the basis of the Sheriff Officer's execution of service and the further notifications and information sent to the Respondent by the tribunal's

administration that the requirements of Rule 24(1) of the 2017 Rules regarding the giving of notice of a hearing had been duly complied with and proceeded with the Application upon the representations of the Applicants' Representative and the material before it, in terms of Rule 29 of the 2017 Rules.

2.3. At the CMD, the tribunal chair raised the issue of amendment of the Application to increase the sum claimed. Rule 14A of the 2017 Rules provides that:

(1) Where a new issue is not raised, a party may request to amend the Application including the sum claimed by intimating the amendment to any other party and the First-tier Tribunal at least 14 days prior to a CMD or hearing. (2) The First-tier Tribunal may consent to the amendment on such conditions, if any, as the First-tier Tribunal thinks fit."

2.4. Ms Simpson advised that Mr Foote had intended to make an application to amend the sum claimed to claim the increased arrears due and that since the CMD he has left the employment of the Applicant's Representative. The tribunal Chair stated that the tribunal's administration had not received any application to amend the sum claimed following the previous CMD on 29 January 2020. Ms Simpson did not have evidence that any such application had been intimated to the tribunal and the Respondent at least 14 days prior to the CMD.

2.5. Mr Hutton stated that in light of the fact that notice had not been given of the intention to amend the sum upwards, he wished to request that the tribunal make an order for the sum of £1950.00 today, which was the sum claimed in the Application for rent arrears as at 28 November 2019. He advised that the Applicants' Representative would make a second application to the tribunal on behalf of the Applicants to claim arrears from 28 November 2019 onwards.

2.6. Ms Simpson explained that the Respondent continues to reside in the Property. She stated that an order for the Respondent's eviction in the related case EV/19/3860 was made on 29 January 2020, by the same legal member who dealt with the CMD in relation to the civil case on the same date. She advised that in the eviction case there had been an error in the eviction order produced on that date and issued to parties. The eviction order should have been dated 29 January 2020 but it was dated 29 January 2019. As a result, the Sheriff Officers instructed by the Applicants' Representative advised the Applicants' Representative that they were unable to enforce the order. Ms Simpson stated that she had

drawn the matter to the attention of the tribunal's administration and was awaiting an the matter to be dealt with by the tribunal. She stated that the Applicants would like to get the amended order as soon as possible so that enforcement action can be instructed to remove the Respondent from the Property. The tribunal chair acknowledged the issue in relation to the other case and indicated that although it was allocated to another legal member, the tribunal's administration and the legal member who dealt with the eviction case would be advised that this matter was outstanding.

- 2.7. The tribunal chair considered the documents in support of the claim for £1950.00 in the Application. She asked the Applicants' Representatives whether the deposit was to be taken into account at this stage as it is included on the rent statement produced with the Application. Ms Simpson advised that the deposit was paid by the Respondent and is still held with Safe Deposits Scotland. She stated that once the Respondent leaves the Property, they will need to assess the Property and consider whether any deductions are proposed in addition to rent arrears. Mr Hutton invited the tribunal to leave the deposit out of the current calculations and confirmed that when the second application for rent arrears is made, the Applicants' Representative will advise the tribunal of the position of any deposit retained in respect of rent arrears which would require to be deducted from the sum claimed. The Applicants' Representatives submitted that the arrears claimed for the period from 20 May 2019 when the PRT started to 28 November 2019 when the Application was made, are lawfully due. They referred to the rent statement produced for the period to 30 November 2019. Pro rata rent of £822.77 was due for the first period from 20 May to 30 June 2019. The Respondent paid that on 17 May 2019. Thereafter, rent was due at £590.00 per calendar month on 1st of the month, from 1 July 2019 to 28 November 2019, totalling £2950.00. During that period the Respondent only made one payment of £1000.00 on 10 September 2019. He has paid nothing further to date. He remains in the Property. The Applicants' Representative requested that the tribunal make a payment order for £1950.00 in respect of that period from 20 May to 28 November 2019.
- 2.8. As an administrative matter, Ms Simpson requested that as Mr Foote has left the Applicant's Representative that she become the point of contact for this case (and the related EV case) and she provided her email address to the tribunal Clerk for that purpose.

3. Findings-in-Fact

- 3.1. In terms of a Private Residential Tenancy agreement between the parties in respect of the Property dated 20 May 2019, the start date of the tenancy was 20 May 2019.
- 3.2. Rent is payable by the Respondent to the Applicants at the rate of £822.77 for the period from 20 May 2019 to 30 June 2019 and thereafter at the rate of £590.00 per calendar month for the period from 1 July 2019 to 28 November 2019 on the 1st day of each calendar month.
- 3.3. The Respondent remains in the Property as at 9 July 2020.
- 3.4. The rent arrears as at 28 November 2019 amounted to £1,950.00.
- 3.5. The Respondent has not made any payments to the Applicant in respect of rent arrears in the period since 28 November 2019.

4. Discussion

- 4.1. As the tribunal was satisfied that the Respondent owes £1950.00 to the Respondent by way of rent arrears to 28 November 2019, the tribunal made an Order for Payment in respect of the rent arrears in the sum of £1950.00.

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.

**Susanne L M Tanner Q.C.
Legal Member/Chair**

9 July 2020