



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) 2014

Chamber Ref: FTS/HPC/CV/20/0143

Re: Property at 201 Hazel Road, Abronhill, Cumbernauld, G67 3BP (“the Property”)

Parties:

Mr David Thomson, 17 Newtown Street, Kilsyth, Glasgow, G65 0LY (“the Applicant”)

Ms Emma Beatty (First Respondent), Ms Linda Connor (Second Respondent), 201 Hazel Road, Abronhill, Cumbernauld, G67 3BP

Tribunal Members:

Lesley Johnston (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for Payment in the sum of £4,200 together with interest at the rate of 3% per annum from the date of the Order, should be granted against the First Respondent only. The Tribunal dismissed the application against the Second Respondent.

Background

1. By application dated 16 January 2020, the applicant landlord, David Thomson, seeks an order for payment of the sum of £4,250 together with interest at the rate of 8% per annum in respect of unpaid rent said to be due to be paid by the Respondents in respect of a tenancy at the property at 201 Hazel Road, Abronhill, Cumbernauld, G67 3BP.
2. The application is made under rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (‘the rules’). The application complies with the formal requirements of rule 111.

3. The Respondents are Emma Beatty and Linda Connor. They are said in the application to be the tenants of the property.
4. The Applicant lodged the following documents with the application:
 1. Notice to Leave and certificates of citation dated 1 November 2019
 2. Title sheet in respect of the property
 3. Section 11 notices in terms of the Homelessness etc (Scotland) Act 2003
 4. Bank statements for the Applicant
5. The application was originally scheduled to proceed to a CMD on 14 April 2020 but was postponed due to the coronavirus pandemic.

The Case Management Discussion

6. The postponed CMD took place by telephone at 2pm on 17 July 2020 in respect of this application and the conjoined application for eviction proceedings (ref EV/20/0144) involving the same parties. The application for eviction was made on the basis of ground 12, schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.
7. The Applicant was represented at the hearing by Mr Onorati, Solicitor, BTO Solicitors on behalf of the Applicant.
8. The Respondents were neither present nor represented.
9. Notice of the postponed hearing was issued to the Respondents by First Class Recorded Delivery on 25 June 2020.
10. The Tribunal was satisfied that the requirements of rule 24(1) had been complied with and accordingly, decided to proceed in the absence of the Respondents in terms of rule 29.

Submissions for the Applicant

11. On behalf of the Applicant, Mr Onorati submitted that the Applicant and the First Respondent entered into a tenancy agreement shortly before 7 January 2019. The Applicant had been approached by the Second Respondent (the First Respondent's mother) explaining that the First Respondent had difficulties with housing. At that time, the Applicant was in a position to offer his property at 201 Hazel Road, Abronhill, Cumbernauld, G67 3BP ('the property') for let to the First Respondent.
12. The Applicant and the First Respondent entered into a Private Residential Tenancy. The agreement was entered into verbally. When questioned about this from the Tribunal, Mr Onorati submitted that according to the Applicant, the First Respondent had found a model tenancy agreement online, but neither party signed the agreement and neither party have a copy. His position was therefore that the tenancy agreement was a verbal agreement only.
13. The parties agreed that the First Respondent would take entry on or around 7 January 2019 and that rent was payable at the rate of £400 per calendar month.
14. The Second Respondent moved into the property for a time, which explained why the Second Respondent was a party to the action. However, the Second Respondent had

since moved out of the property and had not lived there for around three months. Mr Onorati accepted that the liability to pay rent rested with the First Respondent and he confirmed that the Applicant did not seek an Order for Payment against the Second Respondent.

15. Mr Onorati referred to the bank statements lodged on behalf of the Applicant showing that payments had been made by the First Respondent as follows:
 - £400 on 7 February 2019
 - £350 on 15 March 2019
 - £100 on 19 April 2019
 - £50 on 9 June 2019
 - £100 on 10 July 2019.
16. Mr Onorati submitted that the reference in the Schedule of Payments, also lodged in support of the application, to £300 having been received in March 2019 was a typographical error and ought to have read £350.
17. The rent outstanding as at the date the application was made (16 January 2020) was therefore £4,200.
18. Mr Onorati submitted that no further sums had been paid since the date of the application. The rent outstanding for payment as at today's date was in the sum of £6,600.
19. Mr Onorati submitted that no response had been received from the Respondents to the Notice to Leave or the application made to the Tribunal. On the basis that no defence had been put forward, he moved for the application to be granted.
20. Mr Onorati initially submitted that he wished to move to amend the application to the increased sum of £6,600. Following a short adjournment of the hearing, Mr Onorati lodged an updated Schedule of Payments showing the rent arrears as at the date of the CMD in the sum of £6,600. However, he accepted that the Respondents had not been provided with notice of the intention to amend the application to that sum, and therefore confirmed that his instructions were for the Order for Payment to be granted in the sum of £4,200 plus interest at the judicial rate of 8%.

Findings in Fact

21. The Tribunal made the following findings in fact:
 - (i) The Applicant is the heritable proprietor of 201 Hazel Road, Abronhill, Cumbernauld, G67 3BP ('the property');
 - (ii) The First Respondent and the Applicant entered into a tenancy agreement on or around 7 January 2019;
 - (iii) The First Respondent took possession of the property on or around 7 January 2019;
 - (iv) The First Respondent agreed to pay £400 per calendar month by way of rent;
 - (v) The First Respondent paid £400 on 7 February 2019;
 - (vi) The First Respondent paid £350 on 15 March 2019;
 - (vii) The First Respondent paid £100 on 19 April 2019
 - (viii) The First Respondent paid £50 on 9 June 2019

- (ix) The First Respondent paid £100 on 10 July 2019
- (x) The First Respondent paid no rent in January 2019
- (xi) The First Respondent has paid no rent to the Applicant since 7 July 2019
- (xii) A Notice to Leave was served on the Respondents on 1 November 2019, on which date the arrears of rent were £3000;
- (xiii) As at the date the Application was lodged with the Tribunal, the First Respondent was in arrears of rent of £4,200;
- (xiv) As at the date of the hearing, the First Respondent was in arrears of rent in the sum of £6,600.

Reasons for Decision

- 22. The Tribunal accepts that the First Respondent and the Applicant entered into a tenancy agreement in terms of which the First Respondent took entry to the property on or around 7 January 2019 and agreed to pay £400 per month by way of rent.
- 23. The Tribunal is not satisfied that the Second Respondent was a party to the tenancy agreement. In any event, the Applicant did not insist on the application in relation to the Second Respondent. The Tribunal therefore dismisses the application in so far as it relates to the Second Respondent.
- 24. The Applicant served a Notice to Leave on the Second Respondent on 1 November 2019. The Notice provided that the grounds for eviction were grounds 11 and 12. The Notice set out in detail the reasons he was seeking eviction, including:

“The Landlord has only received a total of five payments totalling £1,000 since the start of the tenancy agreement. The arrears of rent as at the date of this notice are £3,000. You have been in rent arrears for over three consecutive months.”
- 25. The Notice attached the bank statements and schedule of non-payment lodged with the application and gave the First Respondent notice of the rent arrears. Further notice was provided to the First Respondent when the application was lodged with the Tribunal.
- 26. The First Respondent has not responded to the Notice to Leave; the application to the Tribunal; or notice of the hearing. The First Respondent has been afforded multiple opportunities to dispute the application but has chosen not to do so.
- 27. On the basis of the bank statements and schedules of non-payment lodged with the application, the Tribunal is satisfied that the sum sought for payment is due and outstanding for payment by the First Respondent.
- 28. The Tribunal therefore grants the Order for Payment against the First Respondent in the sum of £4,200.
- 29. In terms of rule 41A, the Tribunal may include interest when making an order for payment. On the basis that no rate of interest was stated in any tenancy agreement, the Tribunal has a discretion in terms of rule 41A(2)(b) to award interest.
- 30. The Applicant sought interest at the judicial rate of 8%. There is no statutory basis for the First-tier Tribunal awarding the judicial rate of interest. The rate to be applied is a matter for the Tribunal’s discretion. The Tribunal asked Mr Onorati if he had any submissions to make as to the rate to be applied. He made no submission other than to seek payment at the rate of 8%.

31. The Tribunal does not consider that 8% is a reasonable rate to be applied in the circumstances where the Bank of England base rate is 0.1%; and at a time when inflation is low and has been for a number of years. The Tribunal considers that awarding interest at 8% would constitute a windfall for the Applicant.
32. On the basis that the current borrowing rate for short-term loans is approximately 3% per annum, the Tribunal considers that rate to be more appropriate. The Tribunal therefore awards interest at the rate of 3% per annum to run from the date of the Tribunal's decision.

Decision

33. The Tribunal therefore grants the Order for Payment against the First Respondent in the sum of £4,200 together with interest at the rate of 3% per annum from the date of the decision until payment.

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.

Lesley Johnston

17/07/2020

Legal Member/Chair

Date