



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/19/0978

Re: Property at 93 Alness Crescent, Mossbank, Glasgow, G52 1PH (“the Property”)

Parties:

Mr Sultan Mehmood, 21 Crosshill Avenue, Glasgow, G42 8BZ (“the Applicant”)

Ms Karen Louise Mitchell, 93 Alness Crescent, Mossbank, Glasgow, G52 1PH (“the Respondent”)

Tribunal Members:

Ewan Miller (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant should be granted a payment order against the Respondent for the sum of NINE THOUSAND ONE HUNDRED AND FORTY EIGHT POUNDS and 23p STERLING (£9,148.23)

Background

The Applicant was the owner of the Property. He had let the Property to the Respondent by way of a lease commencing 17 December 2017 at a monthly rental of £700 per month. The Applicant alleged that the Respondent had ceased to pay rent and, as a result, he was due a significant amount of arrears and had incurred other costs under the lease. The Respondent was no longer in occupation of the Property, having removed on 11 July 2019 after an order for possession was granted in favour of the Applicant against the Respondent.

The matter had originally called before a Case Management Discussion (CMD) on 3 June 2019 and had been postponed to a further CMD on 2 July 2019. This was primarily as a result of the Respondent seeking to be represented by a solicitor.

The Tribunal had before it the following information:-

- A copy of the lease between the parties
- The Applicant's application to the Tribunal dated 28 March 2019
- A copy of the Applicant's Land Certificate evidencing ownership of the Property
- Copies of the Applicant's bank statements
- A rental arrears statement and invoices for various other costs incurred
- Copies of the Case Management Discussions from 3 June and 2 July 2019
- A Direction to the Respondent requiring her to confirm her position in relation to arrears of rental to the Tribunal by 24 July 2019

Case Management Discussion

The continued CMD took place on 12 August 2019 at 2pm at the Glasgow Tribunal Centre, York Street, Glasgow. The Applicant was present and represented himself. The Respondent was neither present nor represented. Her solicitor from the Govan Law Centre had intimated that they were withdrawing from the case.

The Tribunal noted that the date of the CMD had been intimated appropriately and that the Respondent and her agent had been advised that a decision could be made at a CMD without the Respondent being present. The Tribunal noted that the Respondent had sought a first postponement to allow her to obtain legal representation. The second request was as a result of ill health. Her agents had now withdrawn without any reason or explanation being given. The Respondent had failed to comply with the Direction of the Tribunal. No substantive answer had been given at any point by the Respondent confirming whether she had any basis to deny the sums sought by the Applicant. In light of all of the above, the Tribunal was of the view that the matter needed to be heard at this CMD and there was no material reason not to reach a decision in the absence of the Respondent.

Findings in Fact

The Tribunal found the following facts to be established:-

- The Applicant was the owner of the Property
- The Respondent was the tenant of the Property
- The parties had entered in to a lease with effect from 17 December 2017 at a rental of £700 per calendar month.
- The Respondent had ceased paying rent around August 2018 and arrears had built up since then bar a couple of payments to account.
- The Respondent had ceased to occupy the Property from mid July 2019. At that point there were arrears of rental owing of £7083 to the Applicant.
- The Applicant had incurred £2,065.23 of other justifiable expenses arising from breaches of the lease by the Respondent.

Reasons for the Decision

The Tribunal was satisfied that the Respondent had not paid the rental due to the Applicant. Copies of the Applicant's bank statements had been provided showing no payment of rent. The Applicant had provided a collated rental arrears statement showing the historic position. The Tribunal had no reason to dispute the figures and the Applicant appeared to be credible and reliable. The Respondent had not provided any indication that she was disputing the amount of arrears and indeed had failed to respond to a Direction ordering her to clarify her position.

At each of the two previous CMD's the Applicant had sought (and been granted) the right to increase the sum sought to reflect the increase in arrears. At this CMD the Applicant had done the same again and sought to increase the sum sought for rent arrears to £7083, being the amount due at the date of eviction. The Tribunal noted that, as required by the Tribunal rules, the Applicant had notified the Tribunal and the Respondent and her solicitor 14 days in advance. The Respondent was clearly aware of the proposed amendment as she had responded via email to the Respondent in fairly derogatory terms.

The Tribunal was content that it was appropriate to allow the Applicant to increase the sum sought. In relation to the rent arrears sought, the Tribunal was satisfied they had been vouched for and was content to grant the full amount sought of £7083.

The Applicant also sought a further c£4000 of costs that he alleged he had incurred. The Tribunal was prepared to grant some of these but others were not sufficiently vouched for or were too remote. The Applicant produced some receipts for works done and also pictures showing the condition of the Property that had been taken by Sheriff Officers. The heads of claim were as follows:-

- Redecorating (£1500) – the pictures of the Property clearly showed extensive damage to wallpaper and surface finishes within the Property. The Tribunal also noted an invoice for £1500 from a painter and decorator. The Tribunal was satisfied, on the balance of probability, that this was a genuine cost incurred by Applicant as a result of a breach by the Respondent. The sum of £1500 was therefore **granted**.
- Sheriff Officers fees (£295.23) – these were invoiced from a recognised Sheriff Officers and were clearly incurred in the Applicant gaining possession – **granted**
- General tidy up/repair (£450) – the pictures showed the house and garden had not been left in a tidy condition and it was undoubtedly the case that the Applicant had incurred some cost in this regard. No vouching was available and the Applicant indicated he had used casual labourers. It was apparent that the bath/shower curtain was missing which was costed at £25. The Tribunal was prepared to grant this element and a restricted amount of £150 for labour/cleaning costs - £175 **granted in part**
- Locksmith Charges (£95) – the Applicant had alleged the Respondent had left without returning keys and the locks had to be changed. This was vouched by an invoice and the Tribunal had no reason to doubt the Applicant – **granted**
- Alarm System (£425) – the Applicant advised he had installed an alarm system as he was apprehensive the Respondent may return and damage the

Property. An invoice was provided but the Tribunal was of the view that this claim was too remote and not caused directly by the Respondent. The Property now benefited from an alarm to the Applicant's benefit – **refused**

- Legal fee (£500) – the Applicant sought payment of a legal bill but was unable to produce any vouching and had, in any event, represented himself. The Tribunal did not feel there was sufficient proof to show the cost had been validly incurred – **refused**
- Loss of Rent for 1 month (£700) – the Applicant sought one additional months rent to cover the period of time in which he had to make good the damage incurred. The Tribunal, reluctantly, was not prepared to grant this. There was no provision in the lease for this and no evidence as to how long the Property had been vacant – **refused**

In summary, therefore, the Tribunal was satisfied that the Applicant was due £7083 in rental arrears and a further £2065.23 in regaining possession and making good damage to the Property caused by the Respondent in breach of the terms of her lease. A total sum of £9148.23 would therefore be granted in favour of the Applicant against the Respondent.

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.

Ewan Miller

Legal Member/Chair

12/8/19

Date