



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

Chamber Ref: FTS/HPC/CV/22/0938

Re: Property at 30 Riverbank Street, Newmilns, KA16 9HL (“the Property”)

Parties:

Beth Coughlan, Mr Dirk Weijnants, 9A High Street, Stewarton, KA3 5BP (“the Applicants”)

Mr David Wilson, Mrs Ahakera Galbraith or Wilson, 30 Riverbank Street, Newmilns, KA16 9HL (“the Respondents”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order for the sum of £5321.58 should be granted against the Respondents in favour of the Applicants.

Background

1. The Applicants seek a payment order in relation to unpaid rent. Documents lodged in support of the application include a Tenancy agreement and rent statement.
2. A copy of the application and supporting documents were served on the Respondents by Sheriff Officer on 16 August 2022. Both parties were notified that a case management discussion (“CMD”) would take place by telephone conference call on 21 September 2022, and they were required to participate. On 17 August 2022 the Applicants lodged an updated rent statement showing arrears of £4860 as of 28 July 2022. On 9 September 2022 they lodged a request to amend the sum claimed to £5914.16.

3. The CMD took place on 21 September 2022 by telephone conference call in relation to the application and a related application for an eviction order under reference EV/22/2542. The Applicants participated and were represented by Ms McCourt, the letting agent. The Respondents did not participate and were not represented.

Case Management Discussion

4. Ms McCourt advised the Tribunal that she received a text message last week from the Respondents confirming that they are still residing at the property. No response was received to other enquiries about access or whether they had received documents from the Tribunal. Ms McCourt confirmed that an order for payment is sought for the increased sum of £5914.14, together with interest.
5. The Tribunal was told that the Respondents have been in arrears since March 2021. They have agreed to several repayment plans but always defaulted. They do not provide access to the property. There is no evidence of financial problems which would affect their ability to pay their rent. The Tribunal was referred to the updated tenancy statement and advised that further sums have become due with the total outstanding now at £5914.16.

Findings in Fact

6. The Applicants are the owners and landlords of the property.
7. The Respondents are the tenants of the property in terms of a private residential tenancy agreement.
8. The Respondents have incurred rent arrears of £5321.58.
9. The Respondents owe the Applicants the sum of £5321.58 in unpaid rent.

Reasons for Decision

10. A copy of the tenancy agreement was submitted with the application. In terms of the agreement the Respondents are due to pay rent at the rate of £575 per month, in advance. The Applicants lodged a rent statement with the application and an updated rent statement on 17 August 2022. This shows a balance due on 28 July 2022 of £4860. The Tribunal notes that a further rent payment became due on 28 August 2022 and was not paid. This increased the arrears to £5435. However, as rent is payable in advance, the sum due on 28 August was for the period up to and including 27 September 2022. In their submission, the Applicant seeks to amend the sum to £5914. This appears to be inaccurate as it does not take account of the fact that rent is payable in advance. There

also requires to be an adjustment to take account of the fact that the CMD took place on 21 September 2022. The Tribunal is satisfied that the sum outstanding on 21 September 2022 is £5321.58, being the sum of £5435 less six days rent at a daily rate of £18.90.

11. The Tribunal notes that interest can be applied to the principal sum in terms of Rule 41a of the Procedure Rules. However, as the amended application form makes no reference to interest being claimed, the Respondents have not been notified that interest is being claimed. The Tribunal concludes that interest should not be included.
12. The Tribunal is satisfied that a payment order for the sum of £5321.58 should be granted.

Decision

13. The Tribunal determines that a payment order should be granted against the Respondents.

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.

Josephine Bonnar, Legal Member

21 September 2022