



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/22/0432

Re: Property at 5D Gray Street, Broughty Ferry, Dundee, DD5 2BH (“the Property”)

Parties:

Mr Mark Cashley, Inchgarth House, Forfar, Angus, DD8 1PU (“the Applicant”)

Mr Robert Cargill, last known address 5D Gray Street, Broughty Ferry, Dundee, DD5 2BH (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order be made in favour of the Applicant and against the Respondent in the sum of Six Thousand Six Hundred and Sixty-Five Pounds only (£6665.00) with interest at the rate of 3 per cent per annum from the date of the decision until payment is made.

Background

This is an application for a payment order in terms of Rule 111 of the Tribunal rules of procedure which was received by the Tribunal on 14th February 2022. The Tribunal accepted the application on 1st March 2022. A case management discussion was fixed for 6th May 2022 at 2pm.

The Case Management Discussion

The Applicant did not attend the case management discussion but was represented by Mr Runciman solicitor of Gilson Gray solicitors. There was no appearance by or on behalf of the Respondent. The Tribunal Legal member had access to paperwork which confirmed that the application and papers had been served at the property address by Sheriff Officers on 18th March 2022 by putting these through the letterbox. Mr Runciman understood that the Respondent may have left the property without notice and requested a short adjournment to review his papers to ascertain if he had further information as to when that might have occurred. After an adjournment Mr Runciman was able to advise that the landlord believed that the Respondent may have vacated the property without notice sometime after the application and papers were served. Agents on behalf of the landlord had served a Notice to Leave and a Notice of Abandonment on the Respondent at the property and had inspected the property on 29th March 2022. At the inspection on 29th March there did not appear to be much by way of belongings at the property, but the Notice of Abandonment was there and had been opened. This pointed to the Respondent being in occupation at the property at or around 29th March 2022. In addition, Mr Runciman pointed to the narrative given by Sheriff officers in the execution of service of the Tribunal application and papers which suggested that the application and papers were placed through the letterbox after diligent enquiries were made to ascertain that the Respondent still lived at the address. Mr Runciman submitted that the balance of the evidence pointed to lawful service of the Application and papers having been made at the property when the Respondent was in occupation.

The Tribunal Legal Member was satisfied that fair notice had been given of the Case Management Discussion to the Respondent and that it was appropriate to proceed in his absence.

The Tribunal had sight of the application, an unsigned tenancy agreement, a rent statement, an updated rent statement and a request to increase the sum being requested by way of a payment order which had been intimated to the Respondent by copying his email address into the email sent to the Tribunal. The Tribunal Legal Member was satisfied that the sum being requested could be increased to £6665.00 as this request had been properly intimated to the Respondent more than 14 days before the Case Management Discussion and that the terms of Rule 14A of the tribunal rules of procedure had been satisfied.

The Applicant and Respondent had entered a private residential tenancy at the property with effect from 27th May 2019 with a monthly rent of £475, payable monthly in advance. The papers lodged on behalf of the Applicant indicated arrears of rent building since January of 2021 and that only two payments had been made since January 2021, one on 27th January 2021 and one on 27th February 2021. Mr Runciman had no information as to what efforts had been made to recover the unpaid rent but he was able to advise that the landlord appeared diligent in his responsibilities and had served pre action protocol letters, signposting the Respondent to sources of assistance in advance of an eviction application which might no longer be necessary. It appeared that the Respondent had refused or delayed paying the arrears and it was suggested that the action was necessary as a result. The sum being requested by way of rent arrears included unpaid rent up to April 2022 as the rent was payable monthly in advance. Interest was sought at a rate to be fixed by the Tribunal and had been intimated within the Application.

Findings in Fact

- 1.The Applicant and Respondent entered into a private residential tenancy agreement at the property with effect from 27th May 2019.
- 2.The monthly rent in terms of the agreement is £475 payable monthly in advance.
- 3.Rent arrears started to accrue at the property with effect from January 2021.
- 4.Only two payments have been made towards rent arrears at the property since January 2021.
- 5.Rent arrears in the sum of £6665.00 have accrued in terms of the tenancy agreement.
- 6.The Respondent appears to have left the property without giving notice sometime around 29th March 2022.
- 7.The sum of £6665 is lawfully due by the Respondent to the Applicant by way of rent arrears in terms of the tenancy agreement between the parties at the property.

Reasons for Decision

The Tribunal was satisfied that it was appropriate to make a payment order against the Respondent in the circumstances. Although the Tribunal did not have a great deal of information regarding the Respondent, the information which it did have amounted to a prima facie case suggesting a history of rent arrears having accrued and being lawfully due by the Respondent. The tenancy agreement was unsigned but there was evidence of rent being paid and occupation of the property by the Respondent as recently as March 2022, email intimation of the request to increase the sum being requested to his e mail address and the Respondent had chosen for whatever reason not to attend the case management discussion. It appeared reasonable to grant the payment order. Interest at the rate of 3 per cent per annum was included in the order to run from the date of the order to reflect the use value of the unpaid rent in line with current rates and the request for interest had been intimated to the Respondent.

Decision

The Tribunal made a payment order in favour of the Applicant and against the Respondent in the sum of Six Thousand Six Hundred and Sixty-Five Pounds only (£6665.00) with interest at the rate of 3 per cent per annum from the date of the decision until payment is made.

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.

Valerie Bremner

06 May 2022

Legal Member/Chair

Date