



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 (“The Act”)

Chamber Ref: FTS/HPC/CV/22/1044

Re: Property at Flat 1, 25 Squire Street, Glasgow, G14 0RP (“the Property”)

Parties:

Mr Kristopher Kane, Flat 3/2, 39 Dudley Drive, Glasgow, G12 9RP (“the Applicant”)

Mr Daniel McCann, Jamie Kelly, Flat 1, 25 Squire Street, Glasgow, G14 0RP; 10 Greenhorn's Well Crescent, Falkirk, FK1 5HN (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the First Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) decided to grant the Application and made a Payment Order in favour of the Applicant against the Respondents in the sum of £6,176.00 with interest running on that sum at the rate of 4% per year from today’s date, being 8 July 2022 until payment.

The Applicant seeks a Payment Order in the sum of £6,176.00 in respect of rent arrears said to have been accrued by the Respondent, Daniel McCann under a tenancy between the parties.

The Second Respondent, Jamie Kelly is convened as a joint Respondent in the Application on account of having undertaken to be a guarantor in respect of Daniel McCann’s obligations under the tenancy. The sum claimed in the Application was originally £4,251.00 but due the alleged ongoing nature of the losses, this sum had been amended to the updated sum now claimed by email dated 29 June 2022 and intimated to both Respondents.

The Case Management Discussion

The Application called for a Case Management Discussion (CMD) by conference call at 10 am on 8 July 2022. The Application called alongside the related Application regarding an Eviction Order with Tribunal reference FTS/HPC/EV/22/1063.

The Applicant was personally present and indicated a willingness to proceed. The First Respondent was not in attendance. The Tribunal noted the Respondent had previously made an Application to postpone the CMD to allow him to take legal advice. That had been refused on the basis that this was something that would be addressed at the CMD.

The day before today's CMD, being 7 July 2022, the Respondent emailed the Tribunal and advised that he was not going to attend as he had wrongly thought the Tribunal was down for 10 July (which is a Sunday) and that he had "*an interview today*".

The email also explicitly stated that the Respondent was happy for the Tribunal to proceed to hear the case in his absence and make a decision based on the emails and documentation before the Tribunal.

The Tribunal noted that the Application and information about how to join the conference call had been properly served on the Daniel McCann by Sheriff Officers on 24 May 2022. The Second Respondent, Jamie Kelly was present on the call. Mr Kelly confirmed that he actually lived at number 10 Greenhorn's Well Crescent and so the Tribunal amended Mr Kelly's address accordingly.

The Tribunal decided to proceed to hear the case in the absence of the First Respondent, Mr Daniel McCann.

The Tribunal had carefully considered the many emails submitted by Daniel McCann. There was nothing stated in these emails that suggested that the existence of the rent arrears claimed was disputed.

In fact there was a text message before the Tribunal in which Daniel McCann appeared to apologise to the Applicant and acknowledge the ongoing rent arrears. This text message did nothing to suggest that there was any lawful reason for the rent being retained.

With that in mind, the Tribunal could not consider the brief remarks made in certain emails submitted by Daniel McCann regarding issues with the oven and a couch as being something that could be construed as any possible defence to the Application. Daniel McCann also appeared in his emails to found upon the fact that, whilst he had signed the tenancy agreement with a monthly rent of £725.00, this figure was higher than the originally advertised figure for the Property prior to the tenancy commencing.

The Applicant explained that Daniel McCann had offered to pay the higher rent in order to have the property taken off the rental market and secured for Mr McCann without any delay. The tenancy was clear that the monthly rent was £725.00 and the Tribunal found the representations made by Mr McCann to be irrelevant.

Jamie Kelly acknowledged being a guarantor in respect of the tenancy and therefore being jointly and severally liable to the Applicant for the sums claimed as rent arrears.

In addition to the emails which made no denial of the rent arrears and the text message which specifically acknowledged their existence, the Applicant had also lodged a detailed rent statement which showed an up-to-date account of the rents received, rents due and the sums which remained outstanding.

Mr Kelly made reference to a letter he had received which had sought an amount which did not correlate with the sums now claimed. The Applicant explained that this was because the solicitors he had instructed at that point had used the wrong figures but the sums now claimed had been personally prepared by himself and were accurate.

Mr Kelly appeared to accept this explanation. Mr Kelly also made reference to wanting to see the Applicant's bank statements to justify the sums sought but the Tribunal considered this was an unnecessary exercise and would serve no purpose. There was no basis for suggesting that the figures put forward in the rent statement were anything other than accurate. They also sat comfortably alongside the emails and the text message which corroborated the Applicant's position.

Having heard from the Applicant and having considered all the circumstances of the case and the documentation produced, the Tribunal made the following findings in fact.

Findings in Fact

- I. *The Applicant and Daniel McCann entered into a tenancy agreement at the Property which commenced on 25 February 2020. Jamie Kelly undertook to guarantee Daniel McCann's obligations under the tenancy,*
- II. *The Applicant was the landlord and Daniel McCann was the tenant;*
- III. *The contractual monthly rent was £725.00;*
- IV. *Daniel McCann fell into rent arrears and the sum claimed of £6,176.00 is currently jointly and severally and lawfully due as rent arrears by the Respondents to the Applicant.*

Decision.

Having made the above findings in fact, the Tribunal decided to grant the Application and made a Payment Order in favour of the Applicant against the Respondents in the sum of £6,176.00 with interest running on that sum at the rate of 4% per year from today's date, being 8 July 2022 until payment.

The Applicant sought an award of expenses to be made against both Respondents. The Tribunal listened carefully to the reasons put forward by the Applicant. Having done so and having considered the terms of Rule 40, the Tribunal determined that there was no basis for making any such award of expenses and declined to do so.

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.

A. McLaughlin

Legal Member/Chair

08 July 2022
Date