



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

Chamber Ref: FTS/HPC/CV/21/0501

Re: No 2 Kellyfield Farm Cottage, Arbroath, DD11 2NY (“the Property”)

Parties:

James Baird Miller, Kellyfield Farm, Arbroath, DD11 2NY (“the applicant”)

Albert Kelly, Leigh Kelly, No 2 Kellyfield Farm Cottage, Arbroath, DD11 2NY (“the respondents”)

Tribunal Members:

Adrian Stalker (Legal Member), Janine Green (Ordinary Member)

Decision (in absence of the respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”):

- (1) allows the application to be amended, by deleting of the sum sought “£5,630” and substituting therefor “£6,670”;**
- (2) determined that the sum sought by the applicant, as rent arrears, of £6,670, was lawfully due from by the respondents, and granted an order for payment of that sum, by the respondents, to the applicant.**

Background

1. In October 2016, the applicant let the Property to the respondents, under a short assured tenancy. The parties entered into a written tenancy agreement. The agreed rent was £520 per month.

2. By applications made in February 2021, the applicant sought an order for recovery of possession under section 33 of the Housing (Scotland) Act 1988 (“the Act”), and an order for payment of £5,630.00, being rent arrears. The application under section 33

is FTS/HPC/EV/21/0502. Reference is made the Tribunal's decision in relation to that case, also dated 27 May 2021.

3. On 15 April 2020, notice of acceptance was granted by a legal member. A Case Management Discussion ("CMD") was fixed in respect of both applications, for 10am on 27 May 2021. This was intimated by letter to the parties.

4. On 11 May, the applicant's agents intimated a request to amend the amount of the arrears in application FTS/HPC/CV/21/0501 to £6,670.

The CMD

5. The CMD duly took place, by teleconference call, on 27 May 2021. Mr Kemp solicitor, of Thorntons, appeared on behalf of the applicant.

6. As at 10:10am, neither of the respondents, nor any person appearing on their behalf, had entered the teleconference. Accordingly, the respondents did not appear, and were not represented, at the CMD. The Tribunal members had sight of certificates of citation on both respondents, on 27 April, by Scott & Co, Sheriff Officers. The respondents have not, at any time, played any active role in the proceedings relating to this application. They have made no representations to the Tribunal, in advance of the scheduled CMD.

7. Under rule 17(4) of the Rules, the First-tier Tribunal may do anything at a CMD which it may do at a hearing, including: hearing the case in the absence of one of the parties (rule 29), and making a decision. In the circumstances, the Tribunal was satisfied, under rule 29, that it was appropriate to proceed with the hearing, in the respondents' absence. Mr Kemp asked the Tribunal to grant an order for recovery of possession, under section 33 of the Act.

Findings in fact, and in fact and law; reasons for decision

8. The Tribunal was provided with an up to date copy of a rent account prepared by the applicant's agents. This indicated that the respondents had paid the rent till September 2019. Thereafter, they fell behind in payments. By the time the first Covid-19 lockdown was imposed, in March 2020, the arrears stood at £2,070. No payments have been made towards the rent, since November 2020. Mr Kemp confirmed that the arrears currently stand at £6,670. The Tribunal was asked to allow the application to be amended, and for a payment order to be granted for £6,670.

9. In light of the documents produced, and in the absence of any representation by the respondent to the contrary, the Tribunal was satisfied that that this sum was lawfully due.

Decision

10. The Tribunal accordingly allowed the application to be amended, and granted an order for payment in the sum of £6,670.

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.

Adrian Stalker

Legal Member

Date: 27 May 2021