



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

Chamber Ref: FTS/HPC/CV/19/2029

Re: Property at 14J Stevenston Street, Motherwell, ML1 4RQ (“the Property”)

Parties:

Greystone Asset Management Limited, 362 Derby Street, Bolton, BL3 6LS (“the Applicant”)

Mr Alexander Dodds, 14J Stevenston Street, Motherwell, ML1 4RQ (“the Respondent”)

Tribunal Members:

Sarah O'Neill (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment by the respondent of the sum of £4900 should be granted in favour of the applicant.

Background

1. An application was received on 1 July 2019 from the applicant seeking a payment order brought in terms of rule 111 (Application for civil proceedings in relation to a private residential tenancy) of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”).
2. The applicant was seeking payment of rent arrears of £4500 from the respondents in relation to the property, being the amount of arrears outstanding as at the date of the application. The applicant also sought ‘recovery costs’ incurred by the applicant in respect of the application and the accompanying application for recovery of possession (that application was later withdrawn after the respondent vacated the property).

3. The application included copies of the tenancy agreement between the parties, and a rent statement showing the rent due up until 17 June 2019 to be £4500.
4. A case management discussion (CMD) was held on 30 August 2019. The tribunal agreed to adjourn the CMD at the request of the applicant's solicitor, Ms Joanne Miller, of Miller Campbell Solicitors in order to 1) enable a payment agreement to be drawn up between the parties, and 2) enable the applicant to amend the sum sought.
5. A direction was issued by the previous tribunal on 30 August 2019 requiring the applicant to: 1) lodge an amended rent schedule giving details of the up to date rent arrears being sought in terms of rule 14A of the rules; 2) lodge details of any other sums sought, referred to in the application as 'recovery costs'; and 3) intimate the amended schedule and details of any other sums sought on the respondent at the email address for him provided to the tribunal; by 13 September 2019. The direction was sent to the parties by recorded delivery on 2 September 2019. No response was received from the applicant or its solicitor.

The Case Management Discussion

6. The adjourned CMD was held on 21 October 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The applicant was represented by Ms Miller, who gave evidence on its behalf. The respondent was not present or represented at the CMD.
7. The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a CMD had been duly complied with. As the respondent had moved out of the property on 26 August 2019, and the applicant had no forwarding address for him, notification of the CMD had been sent to him by email on 13 September 2019 to the email address which he had provided to the tribunal. The tribunal delayed the start of the CMD by 10 minutes, in case the respondent had been detained. The tribunal therefore proceeded with the CMD in the absence of the respondent.
8. Ms Miller asked the tribunal to grant an order in favour of the applicant for the sum of £5648, being the outstanding rent due by the respondent up until 26 August 2019. This included the original £4500 sought in the application, together with two further months' rent for the period between 17 June and 17 August 2019, together with a further £148, being the apportioned rent due for the period between 18 and 26 August 2019.
9. Ms Miller also provided to the tribunal a copy of email correspondence between Mr Amir Illyas of Glasgow Southside Properties, the property manager for the applicant, and the respondent dated between 18 August and 18 October 2019. This showed that the respondent had agreed to pay towards the arrears every month starting on 15 September, and that no

payment had been received on that date. Ms Miller told the tribunal that there had been no further contact from the respondent.

10. She also produced a copy email from herself on behalf of the applicant to the respondent dated 1 October 2019, advising him that the outstanding rent was £5648 as set out in the attached rent schedule. The email also informed him that the applicant would be seeking an order for payment of that sum in full at the CMD on 21 October, and gave him a further opportunity to make payments by instalment. She told the tribunal that she had heard nothing further from the respondent.
11. Ms Miller apologised to the tribunal for the lack of any response to the tribunal's direction on behalf of the applicant, which appeared to have resulted from her firm's recent office move and /or some administrative/staffing issues.

Findings in Fact

12. The tribunal made the following findings in fact:

- There was a private residential tenancy in place between the parties, commencing on 17 August 2018.
- The applicant had left the property on or around 26 August 2019.
- The rent payable under the tenancy agreement was £500 per month, payable in advance on the 17th of each month.
- In terms of clause 11 of the tenancy agreement, a deposit of £600 was payable to the applicant by the respondent at the start of the tenancy.
- As at 26 August 2019, the respondent owed the applicant the sum of £5648 in rental payments up to and including 26 August 2019.

Reasons for Decision

13. Having considered all of the evidence before it, the tribunal was satisfied that an outstanding balance of rent arrears was due in the sum of £5648. The tribunal was satisfied that rule 14A of the 2017 rules had been met as regards an amendment to include the sums due up until 17 August 2019 i.e. £5500. While there had been no response to the direction from the applicant, the tribunal had been made aware of the request to increase the sum sought to £5500 at the previous CMD, and the respondent had been made aware of this at least 14 days prior to the adjourned CMD. The tribunal therefore consented to the applicant's request to amend the application to update the sum sought to £5500, which request had been properly made in terms of rule 14 A of the 2017 rules.
14. The tribunal refused to allow the requested amendment to £5648, however, as this request had not been intimated to the tribunal at least 14 days prior to the adjourned CMD, as required by rule 14A of the 2017 rules.
15. The tribunal asked Ms Miller about the £600 tenancy deposit paid by the respondent to the applicant in terms of the tenancy agreement. She advised

the tribunal that she was unsure as to what had happened to this, although she thought it likely that the applicant had made a claim under the relevant tenancy deposit scheme towards the rent arrears. She noted, however, that there may have been other items which may have been subject to claim under the scheme. She requested that the tribunal grant an order for the sum of £5500 less any sum recovered from the tenancy deposit scheme towards the rent arrears. The tribunal chairperson indicated that it was not possible to do so, as the order must be made for a specific sum. Ms Miller indicated that the applicant would not wish a further delay to the proceedings in order to provide evidence as to whether all or part of the deposit had been recovered by the applicant.

16. The tribunal therefore decided to make an order for payment by the respondent to the applicant of £4900, representing the amended sum sought of £5500 less the £600 deposit paid. As no time to pay application had been received from the respondent, this order was made for payment of the entire sum due.

Decision

The tribunal grants an order for payment by the respondent to the applicant for the sum of £4900.

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.

Sarah O'Neill

Legal Member/Chair

21/10/19.

Date