



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

Chamber Ref: FTS/HPC/CV/21/2546

Re: Property at Newton Farmhouse, Dyce, Aberdeen, AB21 0HJ (“the Property”)

Parties:

Craigmar Properties, Chapel Works, Bucksburn, Aberdeen, AB21 9TL (“the Applicant”)

Mr Jacek Knaflewski, Newton Farmhouse, Dyce, Aberdeen, AB21 0HJ (“the Respondent”)

Tribunal Member:

Karen Kirk (Legal Member) and Elizabeth Currie (Ordinary Member)

Introduction

This Hearing concerned an Application for Civil Proceedings in relation to a Private Residential Tenancy under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016. The Hearing took place by teleconference due to the covid-19 pandemic.

Decision

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted a Payment Order against the Respondent for the sum of £6000.

1. Attendance and Representation

Charles Marshall attended for the Applicant.

The Respondent was not present. The Respondent had been served by Sheriff Officer on 3rd February 2022 in relation to the Case Management Discussion which took place in March 16th March 2022. No written representations had been received.

The Tribunal given that the Respondent has since left the property without a forwarding address arranged for service by advertisement to take place. Service by advertisement took place on 14th April 2022.

2. Background/Previous Procedure

A case management discussion took place in this Application on 16th March 2022. At that Hearing the Applicant's representative had set out that the Applicant sought a Payment Order for £17,950 in respect to rent arrears for the property. He had informed the Tribunal that the Respondent had received statements in the post with invoices prepared for the property were also sent. The Applicant's representative further set out that the Respondent rented the property but also a business unit adjacent for a panel beating and spray painting business. This business lease ended on or around July 2021. The tenancy ended around mid February 2022.

The Applicant's representative advised at the case management discussion that both the property and business premises account ran alongside and that when joint payments were received they were allocated as detailed. If there was no allocation detailed the funds were allocated to the oldest debt first and marked accordingly. The Applicant's representative said that Applicant had sought and were granted a Payment Order at the Sheriff Court for the business lease arrears. He could not provide the details of same.

The Tribunal decided to fix a hearing and to issue directions to obtain the following information;

- *A copy of all invoices sent in regards the Property*
- *A copy of the Payment Order and relevant court process in regards the business unit arrears.*
- *A copy of all letters sent to the Respondent concerning the property arrears.*

3. Preliminary Matters

1. The Tribunal noted the Respondent was not present. Service by advertisement had taken place on 14th April 2022.

2. The Tribunal discussed with the Applicant's representative that he had lodged various documents in compliance with the Direction issued by the Tribunal. The Tribunal noted with the Applicant's representative that the invoices lodged commenced from May 2021 although the Tenancy was dated 1st September 2018. The Applicant's representative said that the Applicant's system changed from May 2021 and only started issuing invoices automatically at this time. This also accounts for the fact that the copy letters to the Respondent on the arrears start from May 2021.
3. The Tribunal discussed with the Applicant's representative the Sheriff Court Payment Order Action papers he had lodged. The Tribunal noted the initial writ and court decree was lodged and there were no supporting invoices lodged. The Tribunal raised with the Applicant's representative that the initial writ appeared to seek payment for commercial rent that appears in the joint rental statement for both properties with the application as paid.
4. There were no other preliminary issues raised or discussed.

4. Summary of Hearing

The Applicant's representative said that his uncle, the Applicant was on holiday and was not back in time to give evidence. He said he had made investigations and the information provided in terms of the direction was as much as he could provide. He said the Applicant's solicitor dealt with the court action for payment in regards the commercial property. The Applicant's representative on considering the discrepancies between the documentation relating to both the commercial property and the residential property that this must have been an error.

The Applicant's representative advised that he wished to consider in light of the issues raised to amend the sum sought. The Tribunal adjourned the hearing to allow him to consider matters.

5. Amendment

Following the adjournment of the hearing the Applicant's representative returned and sought to immediately make a request to orally amend the sum sought in the application to £6000 in terms of Rule 13 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The Applicant's representative said that he was not in a position to provide any further evidence to establish the original sum sought and wished to rely upon the invoices lodged from May 2021 only, the letters sent to the Respondent and the separate rent statement provided to the Tribunal. Accordingly he sought to amend to the sum of £6000. The Applicant also relied upon an increase to the rent per month from 1st December 2020 from £700 per month to £750 per

month. The Respondent made submissions that this amount was by agreement and the Respondent thereafter made payments at this amount.

6. Findings in Fact

- 1. The Tribunal was satisfied that the application should be amended in the absence of the Respondent as it did not involve a new issue and it was in the interests of both parties having regard to the Overriding objective to allow same.**
- 2. The Applicant therefore sought an Order for Payment £6000.**
- 3. The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property as a copy title was lodged with the Application.**
- 4. There was a PRT in place between parties dated 1st September 2018.**
- 5. The rental payment in terms of this agreement was £700 per calendar month.**
- 6. Rent due by the Respondent to the Applicant in terms of the evidence heard and relied upon from 1st December 2020 was £750. The Tribunal was satisfied on balance that it was appropriate to grant a Payment Order for £6000.**
- 7. The Tribunal relied upon the rent statement and the invoices and letters which showed no payments of rent from the Respondent from May 2021 until December 2021 inclusive.**
- 8. Accordingly, in terms of Section 11 of the 2016 Act the Tribunal granted a Payment Order against the Respondent.**

7. Reasons for Decision in Absence.

The Tribunal heard credible and reliable evidence from the Applicant 's representative who in light of a lack of evidence and complexities in terms of the fact that the Applicant rented a commercial property and also a residential property determined that he ought to seek to amend same to rely upon the invoices from May 2021 relating to the residential tenancy. The Applicant's representative had complied in part with earlier Directions issued and had been credible and reliable in stating the accounting difficulties he had encountered in providing further evidence. The productions and evidence as it related to rent arrears from May 2021 to December 2021 inclusive was clear and the Tribunal in its discretion granted a payment order.

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.



Legal Member/Chair

16 May 2022
Date
