



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

Chamber Ref: FTS/HPC/CV/20/0938

Re: Property at 10/2 Kilinside Road, Paisley, Renfrewshire, PA1 1SJ (“the Property”)

Parties:

Mr Marc Milne, 50 Glenvilla Circle, Paisley, Renfrewshire, PA2 8TS (“the Applicant”)

Ms Stephanie Park, whose present whereabouts are unknown (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member)

Decision (in absence of the Respondent)

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

Background

- 1) This was an application by the Applicant for civil proceedings in relation to an assured tenancy in terms of rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”), namely an order for payment of rent arrears. The tenancy in question was a Private Residential Tenancy of the Property by the Applicant to the Respondent commencing on 30 November 2018.
- 2) The application was dated 13 March 2020 and lodged with the Tribunal shortly thereafter. The application was accompanied by a rent statement setting out arrears of £1,502.55 being sums said to be due from 28 February until 31 May 2019. The lease for the tenancy accompanied the application and detailed a rental payment of £495 payable in advance on the 30th of each month.

The Hearing

- 3) On 8 September 2020, at a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote conference call, I was addressed by Redmond Harris, a trainee solicitor of Jackson Boyd, on behalf of the Applicant. There was no appearance by the Respondent.
- 4) Service by Advertisement had been sought by the Applicant during the course of the application. It had been granted and undertaken. A Certificate of Service by Advertisement was prepared by the Tribunal’s clerk and provided to me.
- 5) As of 14:07, there being no appearance from the Respondent (that is, she did not call into the teleconferencing number, nor did she do so by the time the call concluded around 14:17). The Applicant’s agent stated that there had been no contact from the Respondent on the matter in recent months and the Tribunal’s clerk confirmed no contact from the Respondent on the application. I was thus satisfied to consider the application in full at the CMD in the absence of the Respondent.
- 6) The Applicant’s representative confirmed that the order for payment was still sought and I took the Applicant’s agent through the rental statement, seeking clarification and further submissions.
- 7) The rental statement showed that no rent had been paid since the rental payment due on 28th February 2019. The rent arrears assigned for that month on the statement was said to be £480. The Applicant’s agent had no explanation for this apparent undercharge for that month’s rent. The rent statement further sought rent of £495 (the agreed monthly rent) on 30 April 2019 for the period to 29 May 2019 as well as a pro-rated rent of £32.55 for 30 and 31 May 2019. The application explained that the Respondent had left on 1 May 2019 without providing notice and the Applicant sought rent equivalent to the notice period. I asked the Applicant’s agent why, if 28 days of extra rent was sought from 1 May 2019 in lieu of notice, the additional two days of rent for 30 and 31 May 2019 were also included. He had no explanation for this apparent overcharge.
- 8) The Applicant’s agent sought interest on the sum sought under Procedure Rule 41A. He proposed 3.5% per annum as an appropriate rate. No motion seeking expenses was made.

Findings in Fact

- 9) On 30 November 2018, the Applicant let the Property to the Respondent by lease with a start date of that day under a Private Residential Tenancy (“the Tenancy”).
- 10) Under the Tenancy, in terms of clause 8, the Respondent was to make payment of £495 per month in rent to the Applicant in advance, being a payment by the 30th of each month to cover the month to follow.

- 11) As of 1 May 2019, there was unpaid rent of £1,485 being made up of an unpaid rent due on 28 February 2019, 30 March 2019 and 30 April 2019 for the period 1 March to 29 May 2019 (each of £495).
- 12) On 1 May 2019, the Applicant noted that the Respondent had left the Property without providing 28 days written notice.
- 13) Had the Respondent provided written notice on 1 May 2019, it would have expired on or around 29 May 2019.
- 14) The sum of rent due from 28 February 2019 until the end of the hypothetical notice period of 29 May 2019 is £1,485.
- 15) On 13 March 2020, the Applicant raised proceedings against the Respondent for an order for payment of rent arrears of £1,502.55.
- 16) On 4 August 2020 the Tribunal intimated the CMD upon the Respondent through Service by Advertisement.
- 17) The Respondent provided no evidence of payment of any part of the said unpaid rent of £1,485.

Reasons for Decision

- 18) The application was in terms of rule 111, being an order for civil proceedings in relation to a PRT. I was satisfied, on the basis of the application and supporting papers, and the submissions provided by the Applicant's representative at the CMD, that rent arrears of £1,485 were outstanding being a straight three months of rent.
- 19) In coming to that figure I discounted the apparent lower rent for 28 February 2020 as a computer error (due to that month being shorter) and did not allow the rent for 30 and 31 May 2019 as it seemed to exceed the notice period that should have been permitted, and the Applicant provided no extenuating circumstances to explain the additional rent sought.
- 20) As the application clearly set out the sums (albeit with the apparent typographical error in regard to the February rent) within the papers intimated to the Respondent by advertisement, I was satisfied that the necessary level of evidence for such civil proceedings had been provided. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal and I was satisfied to make a decision at the CMD to award the slightly reduced sum of £1,485 against the Respondent.
- 21) The interest rate sought seemed more than fair to the Respondent and I was happy to award interest at 3.5% per annum within my powers.

Decision

22) In all the circumstances, I was satisfied to make the decision to grant an order against the Respondent for payment of £1,485 with interest at 3.5% per annum running from today's date.

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.

Joel Conn

8 September 2020

Legal Member/Chair

Date