



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) Act 2018

Chamber Ref: FTS/HPC/CV/19/1246

Re: Property at 15 Dippol Crescent, Auchinleck, KA18 2BZ (“the Property”)

Parties:

Mr Mohammed Asif Ali, 5 Barclay Gardens, Irvine, KA11 2BZ (“the Applicant”)

Ms Jemma Campbell, 13 Dippol Crescent, Auchinleck, KA18 2BZ (“the Respondent”)

Tribunal Members:

Morag Leck (Legal Member)

Decision in absence of the Respondent

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the Respondent to the Applicant in the sum of £5350.00.

Background

This is an application for payment which had originally been raised under Rule 70 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended, and section 16 of the Housing (Scotland) Act 2014. The Tribunal proceeded on the basis that the application would be dealt with under Rule 111 and section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016. The application was based on the Respondent not maintaining rent payments.

The Tribunal had regard to the following documents:-

- i) Application dated 18th April 2019
- ii) Short Assured Tenancy Agreement dated 23rd and 27th December 2017
- iii) Rent statement detailing arrears of rent as at 1st April 2019 of £5350.

The parties were advised by letter dated 31st May 2019 of the date, time and venue for a Case Management Discussion (CMD) and the Respondent was advised to make any written representations by 18th June 2019. The respondent's letter had been served by Sheriff Officers on 4th June 2019. No written representations were received from her

Case Management Discussion

A CMD was held at Ardeer Community Centre, Stevenston on 3rd July 2019. The Applicant did not attend personally and was represented by Mr Robert Gallon, Solicitor. The Respondent did not attend. The CMD proceeded in the absence of the Respondent in terms of Rule 29.

The Tribunal firstly addressed the issue of the Short Assured Tenancy. It was accepted that while there was a Short Assured Tenancy within the papers that this was signed erroneously and defaulted to the model Private Rented Tenancy as the tenancy commenced after 1st December 2017. Accordingly the provisions of Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016 and Rule 111 were relevant to consideration of the application and Mr Gallon acknowledged that the application should be considered on this basis. The Tribunal proceeded accordingly.

Mr Gallon advised that the tenant had taken possession of the property on 1st December 2017. There had been issues with payment of rent over a lengthy period. He confirmed that the amount of rental arrears sought was as stated in the paper apart to the application form and as set out on the Rent Statement which detailed rent arrears of £5350 as at 1st April 2019.

It was also noted that whilst title to the property was held jointly that the applicant was the Landlord in terms of the tenancy agreement and accordingly the application was made by him alone.

Mr Gallon submitted that the applicant had proactively sought to communicate with the Respondent regarding outstanding arrears. His firm had also written to the Respondent prior to raising proceedings but received no response. The Respondent had voluntarily moved out of the Property around April 26th 2019 after she had been served with Notice of Proceedings in respect of recovery of the Property. She had since spoken with the Landlord informally prior to this hearing. However she had not made any suggestion in respect of payment towards the arrears of rent. Mr Gallon understood that the Respondent was possibly working but had no definite information in relation to this. He confirmed that there had been no Tenancy Deposit and whilst the figure for rental arrears may have risen slightly since the date of the application that he was not seeking to amend the application to a higher amount. He submitted that in the circumstances there was no need for a hearing and asked the Tribunal to grant the application.

Findings in Fact

1. The Applicant and the Respondent entered into a Tenancy Agreement dated 23rd and 27th December 2017.
2. The rent payable was £550 per month payable in advance.
3. The arrears of rent as at 1st April amounted to £5350.00.
4. The applicant was entitled to the order for repayment in the sum of £5350.00.

Reasons for Decision

The Tribunal was satisfied from the evidence provided by the Applicant's representative and from the documentary evidence provided that the parties had entered into a tenancy agreement that commenced on 1st December 2017 at the monthly rent of £550.00.

The Tribunal was satisfied that the rent statement submitted by the Applicant's solicitor showed a sum due of £5350 as at the date of the application. The Applicant's representative did not seek to amend the application to a higher sum at the CMD and asked the Tribunal to grant an order for payment in the sum of £5350.00. The Tribunal being satisfied that this sum was due by the Respondent at the date of the application was prepared to grant the order.

Decision

The Tribunal finds that the Applicant is entitled to an order for payment by the Respondent to the Applicant in the sum of £5350.00

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.

Morag Leck

Legal Member

Date

3/7/19