



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 2016

Chamber Ref: FTS/HPC/CV/21/1719

Re: Property at 10 Heathlands Park, Kinellar, Aberdeenshire, AB21 0SG (“the Property”)

Parties:

Miss Shona Marshall, Mrs Julie Ingram, Ms Christine Marshall, 9 Heathlands Park, Kinellar, AB21 0SG; 9 Heathlands Park, Kinellar, AB21 0SG; Glenmar, 2 New Road, Huntly, AB54 8EY (“the Applicants”)

Ms Bliss Stewart, 11 Falconer Court, Inverurie, AB51 4RJ (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision (in absence of the Respondent)

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

Background

This was an application for a payment order dated 30th August 2021 and brought in terms of Rule 111 (Application for civil proceedings in relation to a private residential tenancy) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicants sought in their application payment of arrears in rental payments of £5,400.00 in relation to the Property from the Respondent, and provided with their application copies of the private residential tenancy agreement and rent arrears statement.

The private residential tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*, and

the procedures set out in that Act appeared to have been correctly followed and applied.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 24th September 2021, and the Tribunal was provided with the execution of service.

Shortly before the Case Management Discussion, the Respondent lodged an application for a time to pay direction.

A Case Management Discussion was held at 10.00 on 29th October 2021 by Tele-Conference. The Third Applicant, Ms Christine Marshall, who is in partnership with the other Applicants who together are the landlords of the Property participated, and also represented the First and Second Applicants. Mr Charles Marshall also participated as supporter. The Respondent participated, and was represented by her mother, Mrs Shewan.

Mrs Shewan confirmed that the Respondent accepted that she owed the Applicants £5,300.00 in rent arrears, having paid £100.00 since the application was raised. The Applicants confirmed that was the case, and that they now sought £5,300.00 in this application.

Mrs Shewan explained that the Respondent was in the process of entering into a trust agreement in relation to her debts, and that the company arranging this had contacted the Applicants for discussions. The Respondent had been told that she should not make any agreements in relation to her debts as a result, and she therefore withdrew the application for a time to pay direction.

Mrs Shewan asked the Tribunal to continue this application to allow the trust agreement process to be completed and for the Applicants to discuss that with the company arranging it. The Respondent had discussed matters with the company arranging the trust agreement, but was unsure as to the implications of agreeing to an order being made against her and also wished the opportunity to seek advice on that question.

The Applicants indicated that they would prefer to obtain an order from the Tribunal, but they understood the Respondent's position, and were realistic about holding discussions with the company arranging the trust agreement. If the matter was to be continued, they requested that the continuation be as brief as possible.

In these circumstances, the Tribunal considered that it was in the interests of justice to continue the Case Management Discussion to allow the Respondent to obtain advice about the implications of agreeing to an order being made against her in the context of the debt agreement process, and for the company arranging that to hold discussions with the Applicants.

The Tribunal set a continued Case Management Discussion for the above-mentioned reasons in terms of Rule 28(1) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, to be conducted by Tele-Conference at 10.00 on 24th November 2021. The parties received oral intimation

of the date and time of the continued Case Management Discussion before adjournment of the proceedings on 29th October 2021.

The day before the continued Case Management Discussion, Carrington Dean, a debt agency, e-mailed the Tribunal to advise that a Debt Payment Programme had been approved in respect of the Respondent on 11th November 2021.

Continued Case Management Discussion

A continued Case Management Discussion was held at 10.00 on 24th November 2021 by Tele-Conference. The Third Applicant, Ms Christine Marshall, again participated, and also represented the First and Second Applicants. Mr Charles Marshall also again participated as supporter. The Respondent did not participate, nor was she represented.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Tribunal was invited by the Applicants with reference to the application and papers to grant an order for payment of the sum of £5,300.00. The Applicants advised that they had contacted Carrington Dean in response to its e-mail to the Tribunal the day before, which had been crossed over to the Applicant, and asked if the Applicants could seek an order for payment from the Tribunal with a Debt Arrangement Scheme in place. Carrington Dean had told the Applicants that it could obtain an order from the Tribunal, but that the Applicants could take no action to enforce that order whilst the Debt Arrangement Scheme was operating.

Statement of Reasons

The jurisdiction of the Tribunal in relation to Private Residential Tenancies, such as that which applied to the Property, is set by statute. Section 71(1) of the *Private Housing (Tenancies) (Scotland) Act 2016* provides:

“First-tier Tribunal's jurisdiction

- (1) In relation to civil proceedings arising from a private residential tenancy—
- (a) the First-tier Tribunal has whatever competence and jurisdiction a sheriff would have but for paragraph (b),
 - (b) a sheriff does not have competence or jurisdiction.
- (2) For the purposes of subsection (1), civil proceedings are any proceedings other than—
- (a) the prosecution of a criminal offence,
 - (b) any proceedings related to such a prosecution.”

The Tribunal accordingly has jurisdiction to hear civil proceedings arising from a private residential tenancy such as between the parties in this application.

The Tribunal considered the terms of the private residential tenancy agreement, the rent arrears information provided, and the submissions made by the Applicants, and was satisfied that these disclosed an outstanding balance of rent arrears of the sum sought of £5,300.00, which sum remains outstanding. Rental of £1,050.00 per month was payable in advance in terms of clause 8 of the private residential tenancy agreement. The Respondent had admitted that this sum remains outstanding.

Section 4 of the *Debt Arrangement and Attachment (Scotland) Act 2002* as amended prohibits a creditor from taking various actions after a Debt Payment Programme has been approved. These actions generally relate to enforcement procedures in relation to a debt. There is no provision prohibiting a creditor from obtaining an order for payment from a court or tribunal.

Decision

In these circumstances, the Tribunal made an order for payment by the Respondent to the Applicants of the sum of £5,300.00.

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.

Neil Kinnear

Legal Member/Chair

24/11/2021

Date