

Housing and Property Chamber
First-tier Tribunal for Scotland



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/19/3922

Re: Property at 39 Lochbrowan Crescent, New Cumnock, Cumnock, KA18 4HE ("the Property")

Parties:

Mr Jonathon Dolphin, 8 Nolana Court, Bridgwater, TA5 2RT ("the Applicant")

Ms Johanne Murphy, formerly residing at 39 Lochbrowan Crescent, New Cumnock, Cumnock, KA18 4HE, and whose present whereabouts are unknown ("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 is an application for a payment order dated 10th December 2019 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 Applicant sought in his application payment of arrears in rental payments of £6,310.00 due by the Respondent in respect of his tenancy of the Property until she vacated it.

The Applicant provided with his application copies of the private residential tenancy agreement and a 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 could not be validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal, as she could not be traced and her current whereabouts are unknown.

Service was validly effected by advertisement upon her in terms of Rule 6A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, and the Tribunal was provided with the Certificate of Service by advertisement.

Case Management Discussion

A Case Management Discussion was held on 5th March 2020 at Russell House, King Street, Ayr. The Applicant did not appear, but was represented by Miss Sloey, solicitor, who participated by telephone conference call. The Respondent did not appear, nor was she represented. The Respondent had not responded to this application at any stage either in writing or by any other form of communication.

Miss Sloey explained that the Respondent had been served with a notice to leave, specifying a date for her departure of 20th July 2019. It was subsequently confirmed that as at 22nd July 2019 the Respondent had quit the Property.

The Tribunal noted that the tenancy agreement made provision in clause 8 for payment of monthly rental of £450.00 in advance on the 28th day of each month, to run from that day to the 27th day of the following month.

Miss Sloey agreed that the final rental payment shown on the rent arrears statement, which was due on 28th July 2019, should be deducted from the sum sought, and that the payment of £450.00 for the period 28th June 2019 to 27th July 2019 should be apportioned to the reduced figure of £340.27 on the basis that the Respondent appears to have left on 20th July 2019 in terms of the notice to leave.

Miss Sloey invited the Tribunal with reference to the application and papers to grant an order for payment of the lesser sum of £5,750.27, which is the amount of rent arrears outstanding to 20th July 2019. She confirmed that no further payments have been received from the Respondent since this application was lodged.

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 copy rent arrears statement provided, and the submissions made by Miss Sloey, and was satisfied that these disclosed an outstanding balance of rent arrears in the sum now sought of £5,750.27.

Accordingly, the Tribunal shall make an order for payment of that sum.

Decision

In these circumstances, the Tribunal will make an order for payment by the Respondent to the Applicant of the sum of £5,750.27.

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

05/03/20

Date