

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(1) of the Private Housing (Tenancies) (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/20/1202

Re: Property at The Lodge, Kenlygreen, Boarhills, St Andrews, KY16 8PT (“the Property”)

Parties:

Mr John Shanks Kilgour and Mrs Victoria Ann Kilgour, both residing at Kenlygreen House, Boarhills, St Andrews, KY16 8PT (“the Applicants”),

Thorntons Law LLP, Whitehall House, 33 Yeoman Shore, Dundee DD1 4BJ (“the Applicants’ Representative”) and

Mr David Melville, The Lodge, Kenlygreen, Boarhills, St Andrews, KY16 8PT (“the Respondent”)

Tribunal Member:

G McWilliams- Legal Member

Decision in absence of the Respondent

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

Background

1. This is an Application for a payment order, contained within papers lodged with the Tribunal between 20th May 2020 and 5th August 2020, 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 Rules of Procedure (“the 2017 Rules”).

2. In the Application, the Applicants sought payment of arrears in rental payments of £3300.00 in relation to the Property from the Respondent, and provided copies of the parties Private Residential Tenancy Agreement (“PRT”) and a Rent Arrears Statement.
3. The PRT had been correctly and validly prepared in terms of the provisions of The Private Housing (Tenancies) Act 2016 and the procedures set out in that Act had been correctly followed and applied.
4. The Respondent had been validly served by Sheriff Officers with the Notification, Application papers and Guidance Notes from the Tribunal on 11th September 2020, and the Tribunal was provided with the Certificate of Intimation.
5. The Applicants, through their Representative, subsequently amended their Application to seek an order for payment of updated rent arrears, totalling £6500.00, from the Respondent. The Representative submitted an updated Rent Arrears Statement. The Respondent was sent a copy of the Applicants’ amended Application papers by the Tribunal on 17th September 2020.

Case Management Discussion

6. A Case Management Discussion (“CMD”) proceeded remotely by telephone conference call at 10am on 8th October 2020. The Applicants’ Representative’s Mr M Kemp attended. The Respondent did not attend and was not represented. Mr Kemp stated that the outstanding rent due at the date of the Application was £3300.00, and was in the sum of £6500.00 after the rent due in September 2020 was not paid. Mr Kemp stated that the rent due in October 2020 had also not been paid. He acknowledged that the order for payment sought, and intimated to the Respondent, was in the sum of £6500.00. Mr Kemp submitted that as the Respondent had been effectively served with all papers in respect of the Application for an order for payment, and had not lodged any representations with the Tribunal, nor attended at the CMD, the payment order sought in the amended Application, in the sum of £6500.00, should be granted. Mr Kemp indicated that an Application for a further order for payment, in respect of a balance of arrears of rent due, and monies for gas and gardening work costs, may be lodged in due course.

Statement of Reasons for Decision

7. Section 71 of The Private Housing (Tenancies) Act 2016 provides as follows:
 - (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.

8. Accordingly, the Tribunal has jurisdiction in relation to claims by landlords (such as the Applicants) for payment of unpaid rent against a tenant (such as the Respondent) in respect of a PRT such as this.

9. The Respondent had been validly served with all of the Application papers, and notified of the CMD, but had not lodged representations with the Tribunal, or attended the CMD to provide evidence, and/or make any submission, opposing the order sought. The Tribunal considered the terms of the PRT and the copy Rent Arrears Statements provided, as well as the submission made by the Representative's Mr Kemp, and was satisfied that there was an outstanding balance of rent arrears of £6500.00 due in September 2020 and that it was reasonable to grant an order for payment by the Respondent to the Applicants in that amount.

Decision

10. Accordingly, the Tribunal made an order for payment of the sum of £6500.00.

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.

G McWilliams

8th October 2020

Legal Member

Date