



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/22/3664

Re: Property at Flat 3, 59 Iona Street, Edinburgh, EH6 8SR (“the Property”)

Parties:

Miss Isobel Fung, 5 Bankton Drive, Livingston, EH54 9EH (“the Applicant”)

Mr Callum James Galbraith, previously residing at Flat 3, 59 Iona Street, Edinburgh, EH6 8SR and 5/3 Wheatfield Place, Edinburgh, EH11 2PD and whose present whereabouts are unknown (“the Respondent”)

Tribunal Member: Shirley Evans (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment against the second named Respondent in favour of the Applicant in the sum of ONE THOUSAND TWO HUNDRED AND ELEVEN POUNDS AND NINETY FOUR PENCE (£1211.94) STERLING. The order for payment will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondents.

Background

- 1. This is an application dated 2 October 2022 for an order for payment of rent arrears under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).**
- 2. The application was accompanied by a Private Residential Tenancy Agreement between the parties dated 23 May 2021, a rent ledger with notes, a tracing report and various text messages between the parties.**
- 3. On 31 October 2022 the Tribunal accepted the application under Rule 9 of the Regulations.**

4. On 12 December 2022 Sheriff Officers were instructed by the Tribunal to serve at a copy of the application on the Respondent at his address at 5/3 Wheatfield Place, Edinburgh, EH11 2PD. The Sheriff Officers reported back on 15 December 2022 that service was unsuccessful as the Respondent was no longer resident at the address provided. The copy application and notification of the Case Management Discussion ("CMD") was accordingly served on the Respondent by way of service by advertisement in terms of Rule 6A of the Regulations.

Case Management Discussion

5. The Tribunal proceeded with a CMD on 4 April 2023 by way of teleconference. The Applicant was present and represented herself. There was no appearance by or on behalf of the Respondent despite the teleconference starting 5 minutes late to allow the Respondent plenty of time to join. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in his absence.
6. The Tribunal had before it the Private Rented Tenancy Agreement, the rent ledger with notes and text messages between the parties. The Tribunal considered these documents.
7. The Applicant asked the Tribunal to grant an Order for payment for £1411.94. She explained the tenancy had terminated on 11 October 2022 when the Respondent moved out of the Property following the service of a Notice to Leave on 2 September 2022. The rent had originally been £730 per annum. This was increased to £750 on 23 August 2022. On being questioned by the Tribunal with reference to the rent ledger lodged, the Applicant explained that it took account of the full return of the tenancy deposit of £730 after the tenancy terminated. She accepted however that the rent ledger did not take account of a payment of £200 made by the Respondent on 2 October 2022 which she had previously advised the Tribunal of in an email to the Tribunal on 21 November 2022. The Applicant accepted that this left an amount outstanding of £1211.94.

Findings In Fact

8. The Applicant and the Respondent agreed by way of a Private Residential Tenancy Agreement commencing 23 May 2021 in relation to the Property that the Respondent would pay the Applicant a monthly rent of £730. The rent was increased to £750 per month on 23 August 2022.
9. The Respondent fell into arrears of rent. He last made a payment to account of £200 on 2 October 2022.

10. The tenancy agreement terminated on 11 October 2022 when the Respondent moved out of the Property 2022. The full tenancy deposit was returned to the Applicant of £730 after termination. When the tenancy deposit was applied to the Respondent's arrears, the arrears were reduced to £1211.94.

Reasons for Decision

11. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the submissions made by the Applicant.

12. The Tribunal noted the rent statement lodged which set out how the arrears had arisen and showed the total arrears to 11 October 2022 as being £1411.94. The Tribunal accepted the submissions of the Applicant as being credible. She had been candid by stating that she accepted the rent ledger did not record the Respondent's payment of £200 on 2 October 2022 which reduced arrears to £1211.94 after the full deposit of £730 was returned to her. The Applicant had produced evidence of persistent non-payment of rent with reference to the text messages between the parties and the rent ledger. The Tribunal was satisfied on the basis of the documents, together with the Applicant's oral submissions that the order for payment in favour of the Applicant be granted.

Decision

13. The Tribunal granted an order for payment of £1211.94.

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.

Shirley Evans

4 April 2023

Legal Member

Date

