



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/22/3769

Re: Property at 188A Great Western Road, Aberdeen, AB10 6PB (“the Property”)

Parties:

Pantone300 Properties Limited, 3 St Margarets Court, Aberdeen, AB15 6HS (“the Applicant”)

Mr Stephen Burns, formerly residing at 88A Great Western Road, Aberdeen, AB10 6PB, and whose current 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 was an application for a payment order dated 13th October 2022 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 originally sought in its application payment of arrears in rental payments of £2,250.00 in relation to the Property from the Respondent, and provided with its 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 1st December 2022, and the Tribunal was provided with the execution of service.

On 23rd January 2023 the Applicant provided an updated rent arrears statement disclosing arrears to 19th January 2023 of £3,371.92.

Case Management Discussion

A Case Management Discussion was held at 14:00 on 30th January 2023 by Tele-Conference. The Applicant's Company Director, Mr Douglas Reid, attended but did not participate, and was represented by Mr Winchester, letting agent. The Respondent did not participate, nor was he represented. The Respondent had not responded to this application at any stage either in writing or by any other form of communication.

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.

Mr Winchester referred to the updated rent arrears statement, and confirmed that the Respondent had abandoned the Property, and that the Applicant resumed possession of the Property on 19th January 2023. Arrears of rent to that date were £3,371.92. The Respondent's current whereabouts were unknown.

Mr Winchester requested to amend the sum claimed in the application to that figure in terms of Rule 14A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, and sought the Tribunal's permission to shorten the 14 day period for intimation of the amendment upon the Respondent in advance of today's Case Management Discussion in terms of Rule 16A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Tribunal considered in all the circumstances that it would consent to the amendment, and shortened the 14 day period of intimation on the Respondent to 7 days.

The Tribunal was then invited by Mr Winchester with reference to the application and papers to grant an order for payment of the sum of £3,371.92. Mr Winchester explained that the landlord named in the private residential tenancy of the Property had died, and the Applicant had thereafter acquired the landlord's interest in the Property from her executors with the Respondent still leasing the Property as tenant in terms of the tenancy agreement.

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 Mr Winchester, and was satisfied that these disclosed an outstanding balance of rent arrears due of £3,371.92. Rent of £450.00 per month was due in terms of clause 8 of the tenancy agreement. Accordingly, the Tribunal made an order for payment of that sum.

Decision

In these circumstances, the Tribunal made an order for payment by the Respondent to the Applicant of the sum of £3,371.92.

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.



30/01/2023

Legal Member/Chair

Date

