



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/19/2118

Re: Property at 37 Forest Avenue, Aberdeen, AB15 4TU (“the Property”)

Parties:

Mr Mohammed Hussain Lotfalizadeh Mehrabadi, 374 Great Western Road, Aberdeen, AB10 6PH (“the Applicant”)

Mr Ashton Loutit Brown, whose current whereabouts are unknown, Mr Kieron Millar, 22E Great Western Place, Aberdeen, AB10 6QL (“the Respondents”)

Tribunal Members:

Neil Kinnear (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondents)

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

Background

This is an application for a payment order dated 8th July 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 seeks payment of arrears in rental payments of £4,000.00 in relation to the Property from the Respondents, and provided with his application copies of prior proceedings in Aberdeen Sheriff Court, screenshots of text messages, and council tax confirmation from the local authority.

The Respondents could not be validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal, as the Applicant did not know their current addresses, and their current whereabouts were unknown.

A Case Management Discussion was set for 20th March 2020. That Case Management Discussion had to be cancelled as a result of the coronavirus pandemic, and the lockdown imposed in the United Kingdom as a consequence thereof. The Applicant was subsequently notified with the details of a Tele-Conference and provided with dial-in details. Shortly prior to the Tele-Conference, the Second Respondent made contact with the Tribunal by e-mail and was provided with dial-in details.

Service was validly effected by advertisement 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 Certificates of Service by advertisement.

A Case Management Discussion was held at 10.00 on 29th July 2020 by Tele-Conference. The Applicant participated, and was not represented. The Second Respondent participated, and was not represented. The First Respondent did not participate, and was not represented.

The Tribunal asked the Applicant to clarify his position. He indicated that he had entered into a verbal lease with the Respondents and a third person, whose name was Harry, in about August 2017. Harry subsequently left in about July 2018, leaving the Respondents in occupation of the Property until they left on about 10th November 2018.

The Applicant explained that the rental for the Property was £1,350.00 per month. After Harry left, he agreed with the Respondents that they should pay £400.00 each in monthly rental, which was what they said they had paid to Harry, who had paid the Applicant the whole monthly rent.

Neither Respondent had made payment of £400.00 for the last five months of the lease, and the Applicant accordingly sought an order for payment of £4,000.00.

The Tribunal noted that this application is brought in terms of Rule 111 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, which rule relates to private residential tenancy agreements.

The Tribunal explained to the Applicant that a verbal agreement entered into before 1st December 2017 could not be a private residential tenancy, and would most likely be a verbal assured tenancy.

The Tribunal asked the Applicant if this application ought to have been brought in terms of Rule 70 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, which concerns assured tenancy agreements such as the one he appeared to be describing.

The Applicant confirmed that it should, and asked the Tribunal to amend the Rule under which this application is brought from Rule 111 to Rule 70. He e-mailed a written request to amend to the Tribunal during the Case Management Discussion.

After explaining the procedural effect of what the Applicant wished to do, the Second Respondent confirmed that he had no objection to the amendment.

The Second Respondent provided the Tribunal with his current address, which is 22E Great Western Place, Aberdeen AB10 6QL.

The Second Respondent explained that he had viewed the Property with a man called Harry Hougham, whom he understood to be the landlord. He agreed to rent one of the five rooms there from him in about August 2017. He had no dealings with the Applicant, and did not know of his existence at that time.

Initially, there were three other tenants in the Property, Pascal, Lauren and Matthew. The other three tenants left one by one over the succeeding months in 2017 and were briefly replaced by others, named Deborah and Chris, before they too left and the First Respondent arrived, initially whilst Chris was still there.

The Second Respondent explained that Harry Hougham occasionally stayed in one of the rooms, but was very infrequently in the Property.

The agreement which the Second Respondent had with Harry Hougham was that he would pay him rent, which amount was inclusive of council tax. The Second Respondent registered for council tax purposes as being resident in the Property.

After a period of time, and when only he and the First Respondent were still living in the Property, the Second Respondent became aware that council tax had not been paid, arrears in the thousands of pounds had accumulated, and that these were all registered against his name.

He then agreed with Harry Hougham that he would pay off the council tax arrears in return for his rent being abated entirely. He was effectively paying the council tax arrears for which he should not have been liable instead of rent.

The Second Respondent confirmed that his position was that he never had any rental agreement with the Applicant. His agreement was with Harry Hougham. Further, he did not owe any rent on the Property, as he had paid the council tax arrears as agreed.

The Applicant in response stated that he dealt with Harry Hougham, but that after he left the Property, he had met with the Respondents at the Property in about July 2018. At that point they both agreed to pay rent to him direct of £400.00 each, and asked for a written lease agreement.

The Applicant indicated to the Tribunal that he only sought an order for £2,000.00 against the Second Respondent, and did not seek an order for £4,000.00 against him. He would similarly only seek an order for £2,000.00 against the First Respondent.

The Second Respondent confirmed that he accepted that a meeting took place between him, the First Respondent and the Applicant around July 2018, but that the Respondents had not sought a written lease agreement from the Applicant and had not agreed to pay him rent, as their lease agreement was with Harry Hougham.

In light of the Applicant's indication that he was only seeking an order for £2,000.00 against him, the Second Respondent indicated that he was willing to discuss whether

it might be possible for him and the Applicant to reach an agreement which might result in the Application against him being withdrawn.

The Applicant indicated that he too was willing to have such a discussion, and the Tribunal commended both for their sensible approach.

The Tribunal noted that there may be a legal question of whether initially there was a lease between Harry Hougham and the Applicant, and sub-leases between Harry Hougham and the Respondents, and whether after Harry Hougham left the Property and ended his lease the Respondents's sub-leases ended and were replaced by a lease with the Applicant.

The Tribunal suggested to the Parties that this question was a legally complicated one, and that they might both wish to take some legal advice upon the legal relationships involved. The Tribunal made clear that this was merely an option they might consider, and that they were not obliged to do so if they did not wish to.

There was, in any event, a clear difference between the Parties with regard to the facts involved in this application, and in particular whether in July 2018 they agreed a verbal lease or not.

That being the situation, the Tribunal noted that a Hearing would be required, and explained to the Parties the procedure involved in that. There were clear disputes on the facts in this matter, and also legal arguments to be made in light of whatever facts the Tribunal ultimately found established.

Hearing

A Hearing was held at 10.00 on 15th September 2020 by Tele-Conference. The Applicant participated, and was not represented. The First Respondent did not participate, and was not represented. The Second Respondent did not participate, and was not represented.

The Applicant confirmed that he had discussed matters after the previous Case Management Discussion with the Second Respondent, but that they had been unable to reach an agreement.

The Tribunal clerk telephoned the Second Respondent to enquire if he wished to participate, but obtained no answer from him. The Tribunal confirmed that both Respondents had been intimated with the details of this Hearing by advertisement, and the Second Respondent had also been intimated by e-mail to the e-mail address he had provided.

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 then heard evidence from the Applicant. He clarified that his position was that he did not agree to the continuation of the sub-leases between his tenant, Harry Hougham, and the Respondents with payment to be made to him as a result of Harry Hougham ending his lease agreement with the Applicant. He advised the Tribunal that the original lease agreement was made by him with Harry Hougham's father, but that Harry Hougham was to occupy the property under that lease.

Rather, his position was that the sub-leases had ended when the head-lease between him and Harry Hougham (or his father) ended, and he had then entered a new private residential tenancy agreement directly with the Respondents which had not been reduced to writing.

He clarified that Harry Hougham had left on 13th June 2018, and not in July 2018, as the Tribunal had previously understood his position to be. He also clarified that he had met both Respondents at the time Harry Hougham left in mid-June at the Property, where they agreed to enter a new lease agreement with him with each Respondent paying the same amount in rent as they did to Harry Hougham under the sub-leases of £400.00 per month.

The Tribunal noted that it may have misunderstood the Applicant's position at the Case Management Discussion. As his position was that a new lease agreement was entered into in June 2018, that would be a private residential tenancy agreement and this application should be brought under Rule 111. It was only if he had agreed to the continuation of the existing sub-leases with rental payments made to him instead of Harry Hougham that the application would require to be made under Rule 70.

That being so, the Tribunal refused the proposed amendment intimated to it and the Second Respondent at the Case Management Discussion in terms of Rule 14A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, upon the basis that it was unnecessary.

The Applicant gave further evidence that both Respondents after entering the new lease agreement in mid-June 2018, then failed to make any payment of the £400.00 they each agreed to pay as rent for a five month period from mid-June 2018 to mid-November 2018, when the Applicant confirmed that they both departed from the Property.

The Applicant explained to the Tribunal that he sought an order for £2,000.00 against each Respondent for the rent arrears each owed, and did not wish an order against them both jointly and severally as he did not consider to do so would be fair and would not reflect their 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 evidence it had heard, and the submissions made by the Applicant, and was satisfied that these disclosed an outstanding balance of rent arrears for the period June to November 2018 of the sums sought of £2,000.00 in respect of each Respondent, which sums remain outstanding.

Accordingly, the Tribunal shall make an order for payment of those sums.

Decision

In these circumstances, the Tribunal will make an order for payment by the First Respondent to the Applicant of the sum of £2,000.00, and an order for payment by the Second Respondent to the Applicant of the sum of £2,000.00.

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

Neil Kinnear

Legal Member/Chair

15/09/2020

Date

