



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 70(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/CV/21/2272

Re: Property at 2 Strath Cottages, Cluny, Inverurie, AB51 7RS (“the Property”)

Parties:

Cosmo Linzee Gordon, trading as Cluny Estate, 27-30 Carden Place, Aberdeen, AB10 1UP (“the Applicant”)

Ms Sarah Irving, 2 Strath Cottages, Cluny, Inverurie, AB51 7RS (“the Respondent”)

Tribunal Members:

Ruth O’Hare (Legal Member) and Elizabeth Currie (Ordinary 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 in the sum of £10,950 against the Respondent.

Background

- 1 By application to the Tribunal the Applicant sought an order for payment against the Respondent in respect of outstanding rent arrears. In support of the application the Applicant provided the following documentation:-
 - (i) Private Residential Tenancy Agreement between the parties dated 24th and 25th October 2018; and
 - (ii) Statement of Arrears as at August 2021.

Case Management Discussion

- 2 The Case Management Discussion took place by teleconference on 1st December 2021. The Applicant was represented by Ms Dionne Brady, Gillespie McAndrew Solicitors. The Respondent was not present. The Tribunal noted that she had been served with the application paperwork together with notification of the date, time and location of the Case Management Discussion and therefore determined to proceed in her absence.
- 3 Ms Brady addressed the Tribunal on the terms of the application. She explained that the Applicant had made efforts to work with the Respondent, and assist her with her rent payments. She had been asked to make proposals for payment but had either failed to do so, or failed to comply. The Applicant was not aware of any benefits in place, nor any applications pending. Ms Brady explained that the last payment of rent had been on 24 August 2020 in the sum of £400. The arrears outstanding as at the date of the Case Management Discussion were £12,300. Ms Brady advised that the Applicant had not approached the local authority about payments.
- 4 Ms Brady advised that the Applicant would be seeking an order in the increased sum of £12,300. He was also seeking late payment charges as provided for under the tenancy agreement in the sum of £1450 together with interest at the rate of 4% above the Bank of England base rate per annum. Ms Brady accepted however that these were not mentioned in the application before the Tribunal.

Findings in Fact and Law

- 5 The parties entered into a Private Residential Tenancy Agreement which commenced on 27 October 2018.
- 6 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 7 In terms of Clause 8 of the said Tenancy Agreement the Respondent undertook to make payment of rent at the rate of £450 per calendar month.
- 8 As at 20 September 2021, arrears in the sum of £10,950 were outstanding.
- 9 Despite repeated requests the Respondent has refused or delayed to make payment of the rent due.

Reasons for Decision

- 10 The Tribunal was satisfied that it could make a determination of the application at the Case Management Discussion and that to do so would not be detrimental to the parties.

- 11 Based on its findings in fact, the Tribunal was satisfied that the Respondent was liable to pay the sum of £10,950. The Tribunal accepted the evidence of the Applicants that the Respondent had a contractual obligation to make payment of rent at the rate of £450 per month. There was nothing before the Tribunal to contradict the position put forward by the Applicant. The Tribunal was not however satisfied it could make an order for the increased sum sought by the Applicant, nor the interest or late payment charges, on the basis that these did not form part of the application and the Respondent had not therefore received fair notice of these sums. The Tribunal had similarly not had the opportunity to consider the basis of this element of the Applicant's claim. There would however be nothing to stop the Applicant from submitting a further application to the Tribunal at a future date.
- 12 The Tribunal therefore made an order for payment against the Respondent in the sum of £10,950.
- 13 The decision of the Tribunal was unanimous.

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.

Ruth O'Hare

1st December 2021

Legal Member/Chair

Date