



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/19/0544

Re: Property at 561A South Road, Charleston, Dundee, DD2 4QB (“the Property”)

Parties:

Mrs Sarah Whyte, 49 Broadford Terrace, Broughty Ferry, Dundee, DD5 3EF (“the Applicant”)

Ms Caroline Lamb, 561A South Road, Charleston, Dundee, DD2 4QB (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

This is an application for a payment order dated 12th February 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 sought in her application payment of arrears in rental payments of £113.00 per week from 18th October 2018 to date, and payment in respect of a locksmith's invoice of £240.00.

The Applicant provided with her application copies of the private residential tenancy agreement, and various bank statements and correspondence.

In the absence of the Respondent or any witnesses to give evidence on her behalf, and in the absence of the Respondent providing any evidence as the Tribunal requested her to do, there was no evidence for the Applicant to contest in evidence, and accordingly the Tribunal proceeded with the Hearing by submissions from the Applicant.

The Applicant indicated that there was a loss of water supply, but that this was for a period of three days. She re-iterated that she was prepared to accept a deduction of one week's rental in respect of that period.

The Applicant indicated that aside from the first rental payment made on 11th October 2018, no further payments had been received for a period totalling 33 weeks. Accordingly, the rent arrears which she sought amounted as at today's date to £3,729.00. From this figure requires to be deducted one week's rent in respect of the period when there was a loss of water supply, producing a total of £3,616.00.

The Applicant indicated that the Respondent had not reported any other issues to her in respect of repair issues with the Property.

The Applicant also sought payment of the locksmith's invoice for £240.00. She explained that the Property was found with the door ajar and insecure on 9th December 2018, apparently as a result of the Respondent failing to close and lock it.

The Applicant arranged for a locksmith to attend and put a new lock on the door at a cost of £140.00 so that the Property could be secured, and left a message for the Respondent that she could collect a set of keys to access the Property.

The Applicant was then advised that the Respondent had returned to the Property on 11th December 2018, and forced the door open to obtain access. As a result, the locksmith had to reattend to repair and replace the damaged door locks at a cost of £100.00.

The Tribunal was invited by the Applicant with reference to the application and papers to grant an order for payment of the sum of £3,856.00, which is the amount of rent arrears outstanding as at today's date, under deduction of one week's rent, and together with the locksmith's charges.

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 and the submissions made by the Applicant, and was satisfied that these disclosed an outstanding balance of rent arrears in the sum sought of £3,616.00, under deduction of one week's rent for the period when there was a loss of water supply.

The Tribunal was also satisfied that the Applicant is entitled to damages from the Respondent with respect to the cost of £240.00 incurred in relation to the locksmith in the circumstances she described.

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

Decision

In these circumstances, the Tribunal will make an order for payment by the Respondent to the Applicant of the sum of £3,856.00.

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.

N Kinnear

Legal Member/Chair

04/06/19

Date