



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/19/0867

Re: Property at 33 Blackwood St, Anniesland, Glasgow, G13 1AL (“the Property”)

Parties:

Mr Neil Ross, 19 Napier Crescent, Strathaven, ML10 6XU (“the Applicant”)

Ms Siobhan Lafferty, 33 Blackwood St, Anniesland, Glasgow, G13 1AL (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision (in absence of the Applicant and 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 March 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 £3,000.00 in relation to the Property from the Respondent, and provided with his application copies of the Private Residential Tenancy agreement and copy bank statements.

As at the date when the application was first made, the Applicant had sought the sum of £1,800.00 in respect of the three months’ rental then outstanding, but the Applicant had asked the Tribunal by e-mail of 1st May 2019 to amend this figure to

the sum then outstanding of £3,000.00, which amendment was intimated by the Tribunal to the Respondent.

The tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 15th April 2019, and I was provided with the execution of service.

A Case Management Discussion was held on 16th May 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant appeared, and was not represented. The Respondent also appeared, and was not represented.

The Applicant explained that the Respondent had made payment of £1,200.00 at the commencement of the tenancy. This figure comprised the first monthly rental payment in advance of £600.00, together with the deposit payment of £600.00.

Since that time, the Respondent had failed to make any further payments of rental. The sum sought in this application of £3,000.00 represents five months of rent, which was the sum outstanding as at 16th May 2019.

The Respondent candidly accepted that the outstanding rental sought was the amount correctly due by her to the Applicant. She apologised and explained that a change in her personal circumstances had affected her finances, and she did want to pay the Applicant the sums due.

The Tribunal brought the Respondent's attention to the possibility of her making an application for a time to pay direction in terms of Rule 41H of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, and the Respondent indicated that she wished to do this.

The Tribunal clerk provided the Respondent with the appropriate application form, and the Applicant with the appropriate response form, and the Tribunal explained the procedure to the parties.

Both parties were anxious to resolve matters swiftly, and the Respondent indicated that she could complete and return the application form to the Tribunal by Monday 20th May 2019. The Respondent indicated that if the Respondent did so, he would reply by return with the response form to the Tribunal's e-mail providing the application form to him.

The Tribunal issued a Direction to the Respondent to return the completed application form by close of business on Monday 20th May 2019, and continued the Case Management Discussion to 10th June 2019, which date might be used for a hearing on the time to pay application in the event that the Applicant objected to the granting of a direction as sought by the Respondent.

The Tribunal advised the parties that if the Applicant confirmed that he would make no written objection to the application, the continued Case Management Discussion

would be discharged and the Tribunal would simply proceed to make an order for payment with a time to pay direction.

Since the Case Management Discussion, the Respondent has failed to comply with the Tribunal's direction of 16th May 2019, and has failed to return a completed application form for a time to pay direction. The Tribunal in these circumstances cancelled the continued Case Management Discussion set for the 10th June 2019.

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 Parties, and was satisfied that these disclosed an outstanding balance of rent arrears in the sum sought of £3,000.00, as previously discussed at the Case Management Discussion of 16th May 2019 and as admitted by the Respondent at that time.

As a result of the Respondent's failure to comply with the Tribunal's direction of 16th May 2019, and failure to return a completed application form for a time to pay direction, there are no facts disputed by the parties.

The Case Management Discussion set for 10th June 2019 was agreed by the parties with the Tribunal solely for the purpose of holding a hearing on the time to pay application in the event that the Applicant objected to the granting of a direction as sought by the Respondent.

As a result of the Respondent's failure to comply with the Tribunal's direction of 16th May 2019, and failure to return a completed application form for a time to pay direction, the Tribunal will determine the proceedings without a hearing in terms of Rule 18 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

Having regard to the facts which are not disputed by the parties, the Tribunal is able to make sufficient findings to determine the case and to do so would not be contrary to the interests of justice.

Decision

In these circumstances, the Tribunal will make an order for payment by the Respondent to the Applicant of the sum of £3,000.00.

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.

N Kinnear

Legal Member/Chair

05/06/19

Date