



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”)

Chamber Ref: FTS/HPC/CV/23/1135

Re: 99 Priorwood Drive, Dunfermline, KY11 8FG (“the Property”)

Parties:

Mr Joseph Di Caprio, 1 Gravel Bank Road, Woodley, Stockport, SK6 1PS (“the Applicant”)

Mr Michael McCallum, formerly of 99 Priorwood Drive, Dunfermline, KY11 8FG, and now of an address unknown (“the Respondent”)

Tribunal Member:

Pamela Woodman (Legal Member)

Present:

The case management discussion in relation to case reference FTS/HPC/CV/23/1135 took place at 10am on Friday 20 October 2023 by teleconference call (“the **CMD**”). The Applicant was present. The Respondent was not present and was not represented at the CMD. The clerk to the Tribunal was Ronald Lee.

DECISION (in the absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment for £900 be granted against the Respondent in favour of the Applicant.

BACKGROUND

1. An application had been made to the Tribunal under section 71(1) of the 2016 Act and in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended. More specifically, the application was made in

terms of rule 111 (*Application for civil proceedings in relation to a private residential tenancy*) of the HPC Rules.

2. The order sought from the Tribunal was an order for payment against the Respondent in the sum of £1,050.
3. The application was accompanied by various documents, including copies of the following:
 - a. Scottish private residential tenancy agreement (signed but undated) between (i) the Applicant and Mrs Denise Di Caprio and (ii) the Respondent ("**Tenancy Agreement**"), providing for:
 - i. a start date of 5 February 2022;
 - ii. rent of £950 per calendar month, payable in advance;
 - iii. payments of rent to be received by the Applicant on or before the 5th of the month; and
 - iv. payment of a rent deposit of £950.
 - b. document which purported to be a rent ledger as at 8 September 2022 which referred to entries from 5 January 2022 (being before the start date of the Tenancy Agreement and noting an amount of £500 carried forward prior to that date) to 5 September 2022 – it did not include a running total of arrears but stated that there were arrears of £1,050.
 - c. handwritten receipt for return of two keys on 23 October 2022.
4. The Tribunal noted that the Applicant and Denise Di Caprio were the registered proprietors of the Property (FFE55155).
5. The joint owner of the Property provided a letter of authority for the application to proceed in the sole name of the Applicant.
6. A notice of acceptance of the application was issued by the Tribunal dated 13 June 2023 under rule 9 of the HPC Rules, which confirmed that the application paperwork had been received by the Tribunal between 11 April 2023 and 16 May 2023.
7. The notice of the CMD had been served by advertisement in accordance with rule 6A of the HPC Rules. A certificate of service of advertisement was provided to the Tribunal.
8. This decision arises out of the CMD.

PROCEEDINGS, NAMELY THE CMD

9. The Tribunal noted that it was satisfied that the requirements of rule 6A of the HPC Rules had been met and, accordingly, that notice of the CMD had been deemed to be served on the Respondent.

10. The Tribunal was satisfied that the CMD could proceed in the absence of the Respondent.
11. The Applicant explained that the Respondent had been a tenant in the Property for 3 to 4 years. However, the Tribunal noted that the Tenancy Agreement provided to it commenced on 5 February 2022 and so it was not willing to consider anything before that date on the basis that there was no evidence to support any claim relating to the previous period.
12. The Applicant confirmed that the tenancy deposit of £950 had been lodged with Letting Protection Scheme Scotland and had been paid over to the Applicant on 7 September 2023 (which was the entry noted in the rent ledger on 8 September 2023) which had reduced the amount of rent arrears. Accordingly, he noted that this had been taken into account in the amount claimed of £1,050.

FINDINGS IN FACT

13. The Tribunal was satisfied that rent at a rate of £950 per calendar month was payable under the Tenancy Agreement in respect of the Property from 5 February 2022 to (and including) 4 October 2022.
14. The Tribunal was satisfied, on the balance of probabilities, that there were rent arrears of £900 relating to the period from 5 February 2022 to (and including) 4 October 2022.

REASONS FOR DECISION

15. The Tribunal found, on the balance of probabilities, that £900 was due and payable by the Respondent to the Applicant.
16. For the avoidance of any doubt, the Tribunal noted that, in reaching its decision on quantum, it did not take account of any entries in the rent schedule relating to dates on or prior to 4 February 2022 (including the carried forward balance of £500) nor the two entries noted as "REFUND" for £50 and £100 respectively.

DECISION

17. The Tribunal granted the application under section 71(1) of the 2016 Act for an order for payment in the sum of £900 (nine hundred pounds sterling).
18. Nothing in this decision prohibits the Applicant from seeking to recover (through a new application) any other amount which may be evidenced as being due and payable by the Respondent.

Right of Appeal

In terms of Section 46 of the Tribunals (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.



P S Woodman

20 October 2023

Legal Member (chair)

Date