

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/CV/23/1019

Re: Property at 7 Drainie Way, Lossiemouth, Moray, IV31 6SZ (“the Property”)

Parties:

Mr Stephen Parker and Mrs Gillian Parker, both residing at 137 Rue de Chamay, 79400 Nanteuil, France (“the Applicants”) and

Mr Shane Sullivan, formerly residing at 7 Drainie Way, Lossiemouth, Moray, IV31 6SZ and at 105 Paul Street, Lochgelly, KY5 9AW and whose present address is unknown (“the First Respondent”); and

Ms Gabrielle Cordell, formerly residing at 7 Drainie Way, Lossiemouth, Moray, IV31 6SZ, and now residing at 4 Cromarty Place, Lossiemouth, IV31 6ST (“the Second Respondent”)

Tribunal Member:

G McWilliams- Legal Member

Decision in absence of the Respondents

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determines to grant an order for payment by the Respondents, jointly and severally to the Applicants of the sum of TWO THOUSAND EIGHT HUNDRED AND FORTY FOUR POUNDS (£2,844.00) STERLING

Background

- 1. The Applicants had applied under Rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the**

2017 Rules”) (Application for civil proceedings in relation to a private residential tenancy) for an order for payment in respect of rent arrears.

Case Management Discussions

2. A Case Management Discussion (“CMD”) proceeded remotely by telephone conference call on 29th June 2023. The Applicant Mr Parker attended. The Respondents did not attend and were not represented. Reference is made to the Notes on that CMD dated 29th June 2023.
3. A further CMD proceeded remotely by telephone conference call at 10am on 5th December 2023. The Applicant Mr Parker attended. The Respondents did not attend and were not represented.
4. Sheriff Officers had served copies of the Application papers, and intimated details of the CMD on 5th December 2023, to the Second Respondent Ms Cordell by way of personal service upon her on 31st October 2023. Sheriff Officers were unable to carry out successful service of the Application papers, and intimate the CMD details, upon the First Respondent, Mr Sullivan at the address 105 Paul Street, Lochgelly, KY5 9AW, on 1st November 2023. They ascertained that that address was Mr Sullivan’s parents’ home and that Mr Sullivan had left there around May 2023. The Tribunal’s Office then carried out service of the Application papers, and intimation of the CMD, by way of advertisement on the website of the Tribunal, in terms of Rule 6A of the 2017 Rules, on 8th November 2023.
5. At the CMD on 5th December 2023 Mr Parker stated that the balance of rent arrears owing at the tenancy termination date, of 29th May 2023, had been reduced by the sum of £600.00 being the Respondents’ deposit monies which were credited to him and his wife by SafeDeposits Scotland on 18th July 2023. Mr Parker sent an email to the Tribunal’s office with an updated Rent Statement during the course of the CMD. Mr Parker said that he had received an e-mail from Ms Cordell after she had been served with the Application papers by Sheriff Officers, on 31st October 2023, in which she again stated that Mr Sullivan should be responsible for payment of rent arrears. Mr Parker stated that he was sympathetic to Ms Cordell given his knowledge of her difficulties in her relationship with Mr Sullivan. He stated that he wished the Tribunal to grant a payment order in respect of the balance of the rent arrears owing, of £2,844.00, against both Respondents Mr Sullivan and Ms Cordell.

Statement of Reasons for Decision

6. In reaching their decision the Tribunal had regard to the terms of Section 71 of The Private Housing (Tenancies) Act 2016 provides as follows:

(1) In relation to civil proceedings arising from a private residential tenancy (“PRT”)-

(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.

7. Accordingly, the Tribunal has jurisdiction in relation to claims by landlords (such as the Applicants) for payment of unpaid rent against tenants (such as the Respondents) in respect of a PRT such as this.

8. The Tribunal considered all of the Application papers, and the submission of Mr Parker. Having done so, the Tribunal found, on a balance of probabilities, that the Respondents Mr Sullivan and Ms Cordell are in rent arrears of £2,844.00. The Tribunal was satisfied that the Application papers, and intimation of the CMD on 5th December 2023, had been validly served on both Respondents, as narrated in paragraph 4 above. Mr Sullivan and Ms Cordell have not lodged any representations with the Tribunal or attended either of the CMDs to provide any evidence and/or make any submissions to oppose and contradict the basis for the order sought by the Applicants. Accordingly, the Tribunal found in law that the Respondents, being the joint tenants in the parties’ PRT, are jointly and severally liable to the Applicants for payment of the rent arrears. The Tribunal was satisfied that it was reasonable to grant an order for payment by Mr Sullivan and Ms Cordell, jointly and severally, to Mr and Mrs Parker, in the total amount of £2,844.00.

Decision

9. Therefore, the Tribunal made an order for payment by the Respondents, Mr Shane Sullivan and Ms Gabrielle Cordell, jointly and severally, to the Applicants, Mr Stephen Parker and Mrs Gillian Parker, of the sum of TWO THOUSAND EIGHT HUNDRED AND FORTY FOUR POUNDS (£2,844.00) STERLING.

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.

G. McWilliams

Legal Member

5th December 2023
Date