



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) 2016 Act

Chamber Ref: FTS/HPC/CV/23/4598

Re: Property at 4 Arranview Court, Irvine, KA12 8ST (“the Property”)

Parties:

James Brown, 7 Southpark Road, Ayr, KA7 2TL (“the Applicant”)

Sion Morgan, whose current whereabouts are unknown (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member)

Decision (in absence of the Respondent)

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

Background

1. This is an application by the Applicant for civil proceedings in relation to a private residential tenancy in terms of rule 111 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”), namely an order for payment of rent arrears. The tenancy in question was a Private Residential Tenancy (“PRT”) by the Applicant to the Respondent commencing on 10 April 2023.
2. The application was dated 19 December 2023 and lodged with the Tribunal on that date. The application sought payment of arrears of £1,609.52 being arrears to the conclusion of the Tenancy on 11 August 2023. The lease for the Tenancy accompanied the application and it detailed a rental payment of £525 payable in advance on the 10th of each month. A rent statement also accompanied the application, showing the arrears comprising of unpaid rent for 10 May, 10 June and 10 July 2023 of £525 per month, plus pro-rated rent for 10 to 11 August 2023 of £34.52. The statement also showed a deposit of £525 being uplifted but then paid to the Applicant on 27 November 2023 without diminishing the arrears.

The Hearing

3. The matter called for a CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 1 October 2024 at 10:00. I was addressed by Fiona Hunter, manager, Donald Ross Residential. There was no appearance from the Respondent.
4. I was informed by the clerk that no contact had been received from the Respondent (or on his behalf) with the Tribunal. Further, the Tribunal's Sheriff Officer and process servers had failed to locate the Respondent at the address provided in the application, and service by advertisement had then been undertaken in normal form. The Applicant's agent gave submissions that contact had been lost with the Respondent some time before. There had been contact for around a month after the end of the Tenancy and then some limited contact with the Respondent's father, but nothing since. She believed he had moved away from the area. (Tracing reports provided an address in England, at which intimation was not successful, and information was provided in the application papers of an employer in England.) Having not commenced the CMD until around 10:05, I was satisfied to consider the application in the Respondent's absence. In any case, no attempt was made by the Respondent (nor anyone on his behalf) to dial in late to the CMD.
5. I was satisfied with the arithmetic in the rent statement provided by the Applicant and that there was no dispute intimated by the Respondent, who had not sought to enter appearance. I sought clarification as to the termination of the Tenancy. The Applicant's agent stated that a Notice to Leave had been issued (though not included in the papers) and following its expiry a visit to the Property on 11 August 2023 had found the front door apparently "kicked in". Arrangements were made by the Applicant's agent to secure the Property and contact the Respondent. Contact was successful on that occasion and the Respondent confirmed he had left the Property. He was provided with an opportunity to return to collect furniture and other belongings that had been left by him at the Property but had declined to do so. On that basis, the Applicant's agent was treating 11 August 2023 as the date of the end of the Tenancy further to the contact with the Respondent following that day's visit to the Property.
6. No motion was made for expenses or interest.

Findings in Fact

7. On or about 30 March 2023 the Applicant let the Property as a Private Residential Tenancy to the Respondent under a lease with commencement on 10 April 2023 ("the Tenancy").
8. In terms of clause 8 of the Tenancy Agreement, the Respondent required to pay rent of £525 a month in advance on the 10th day of each month.
9. The Tenancy terminated on 11 August 2023 in terms of section 50 further to the Applicant serving a Notice of Leave which expired, and the Respondent ceasing to occupy.

10. The Respondent failed to make payments of rent of £525 a month on 10 May, 10 June and 10 July 2023 totalling £1,575.
11. The Respondent failed to make any payment of rent for the period 10 to 11 August 2023.
12. Pro-rated rent for 10 to 11 August 2023 is £34.52.
13. The total arrears as of 11 August 2023 was £1,609.52.
14. The balance of arrears outstanding as of 1 October 2024 remains £1,609.52.
15. The Respondent had left the Property unsecured. The Respondent required to make the Property secure.
16. The Respondent left personal belongings at the Property which required to be disposed of by the Applicant.
17. The Respondent received intimation of the CMD by way of service by advertisement and did not provide submissions, nor enter an appearance, in the application.

Reasons for Decision

18. The application was in terms of rule 111, being an order for civil proceedings in relation to a PRT. I was satisfied, on the basis of the application and supporting papers, and the discussion at the CMD, that there were rent arrears remaining of £1,609.52 as of today.
19. I was not addressed on the reason for the deposit being uplifted and passed to the Applicant, rather than reduce the arrears. I was however addressed on the Respondent having left the Property unsecured, which required work to secure it, and having left belongings which would have been required to be cleared by the Applicant. If the Respondent takes issue with the manner in which the deposit has been applied other than against the arrears, he has failed to take steps to dispute the sum sought but is free to raise his own application for repetition of any part of the deposit that he regards as incorrectly applied.
20. I was thus satisfied that the necessary level of evidence for these civil proceedings had been provided for an order at this figure.
21. I shall make a decision to award the sum of £1,609.52 against the Respondent, being an order for rent arrears under the Tenancy to the termination date of 11 August 2023.

Decision

22. In all the circumstances, I was satisfied to make the decision to grant an order against the Respondent for payment of £1,609.52.

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.

J Conn

1 October 2024

Legal Member/Chair

Date