



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/20/0295

Re: Property at Flat 0/1, 36 Brockburn Road, Glasgow, G53 5JX (“the Property”)

Parties:

Miss Mylan Liu, 16 Stamperland Hill, Glasgow, G76 8AF (“the Applicant”)

Mr David Anthony Fletcher, formerly residing at Flat 0/1, 36 Brockburn Road, Glasgow, G53 5JX, and whose current whereabouts are unknown (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal 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 18th September 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 £2,000.00 in relation to the Property from the Respondent, and provided with her application copies of the private residential tenancy agreement, and notice to leave with execution of service.

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

The Respondent could not be validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal, as the Applicant did not know his current addresses, and his current whereabouts are unknown.

A Case Management Discussion was set for 17th April 2020. That Case Management Discussion had to be cancelled as a result of the coronavirus pandemic, and the lockdown imposed in the United Kingdom as a consequence thereof. The Applicant was subsequently notified with the details of a Tele-Conference and provided with dial-in details.

Service was validly effected by advertisement in terms of Rule 6A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, and the Tribunal was provided with the Certificate of Service by advertisement.

A Case Management Discussion was held at 14.00 on 29th July 2020 by Tele-Conference. The Applicant participated, and was not represented. The Respondent did not participate, and was not represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

The Applicant confirmed that the Respondent quit the Property on 10th October 2019. The Applicant does not know his current whereabouts. Rental of £500.00 per month was payable in advance in terms of clause 7 of the private residential tenancy agreement.

The Applicant asked the Tribunal to grant an order for the outstanding rental due, which she advised is more than the sum currently sought. She advised that there was a further approximately two months of rent arrears accrued until the 10th October 2019 which she wished to seek.

The Tribunal explained that it considered that it could not properly grant an order today against the Respondent in his absence for a sum which is significantly more than that sought in the application form.

The Tribunal explained that the Applicant could either seek an order for the sum sought in the application and thereafter bring a further application for further sums of rental which were outstanding, or alternatively, the Applicant was allowed to request an adjournment of the Case Management Discussion in order to allow her to amend her application in terms of Rules 14A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended to the greater sum which she is now seeking.

In terms of Rule 14A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, a request to amend the application must be intimated to the Tribunal and to the Respondent at least 14 days prior to a Case Management Discussion.

The Applicant asked the Tribunal to adjourn this application to a further date to allow her to provide a written amendment to the Tribunal in which she would seek to increase the sum sought to the figure which is due as at 10th October 2019 when the

Respondent quit the Property. The Applicant cannot intimate that to the Respondent, as she does not know his whereabouts.

However, Rule 6A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended provides that where any formal communication requires to be served on a Party under the Rules, and the party's address is unknown, the communication is deemed to be served if it has been publicised by advertisement on the Tribunal's web-site for not less than 14 days.

Accordingly, the Applicant may apply to the Tribunal to seek that her request to amend her application be publicised by advertisement on the Tribunal's web-site, and she required to do so.

The Tribunal considered the Applicant's submission to be reasonable in the circumstances, and consistent with the overriding objective of the Tribunal to deal with proceedings justly and in a manner which is proportionate to the complexity of the issues and the resources of the parties in terms of Rule 2 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

Rule 28 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended allows the Tribunal discretion on an application by a party to adjourn a hearing on cause shown.

The Tribunal considered that the Applicant has shown there is good reason why an adjournment was necessary, in order to allow her to amend the sum sought in her application to reflect the rental arrears which are outstanding as at the date when the Respondent quit the Property.

It seemed only just that the Applicant be given an opportunity to do so, and the Tribunal accordingly exercised its discretion to adjourn this Case Management Discussion to a further date.

Finally, the Tribunal noted that there was a slight difference in the postcode of the Applicant's address as shown in her application form and the lease agreement. The Applicant confirmed that the correct postcode is G76 8AF and not G73 8AF, and the Tribunal corrected that error in its records.

In these circumstances, the Tribunal continued the Case Management Discussion to a further date, in order to allow the Applicant to amend her application.

By e-mail to the Tribunal dated 14th September 2020, the Applicant intimated a proposed amendment to increase the sum sought to £2,950.00.

A continued Case Management Discussion was held at 10.00 on 18th September 2020 by Tele-Conference. The Applicant participated, and was not represented. The Respondent did not participate, and was not represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal explained that it could not grant an order for the increased sum sought that day, as the proposed amendment had not been intimated to the Tribunal at least 14 days prior to the continued Case Management Discussion, nor had it been intimated to the Respondent by advertisement, in terms of Rules 6A and 14A.

The Applicant apologised, and explained that she had not properly read the procedure as fully explained in the Tribunal's Case Management Discussion note of 29th July 2020. She invited the Tribunal to continue this application one further time in order to allow the proposed amendment of the sum sought to be intimated on the Respondent by the Tribunal by advertisement together with intimation of the further continued Case Management Discussion to be set.

In these circumstances, the Tribunal exercised its discretion to adjourn the continued Case Management Discussion one further time in order to allow the Applicant's proposed amendment to be intimated by advertisement on the Respondent.

Thereafter, the Tribunal intimated the further continued Case Management Discussion and the Applicant's amendment by advertisement on the Respondent.

Continued Case Management Discussion

A further continued Case Management Discussion was held at 10.00 on 6th November 2020 by Tele-Conference. The Applicant again participated, and was not represented. The Respondent again did not participate, and was not represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Tribunal was invited by the Applicant with reference to the application and papers to grant an order for payment of the sum of £2,950.00.

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 updated rent arrears information provided, and the submissions made by the Applicant, and was satisfied that these disclosed an outstanding balance of rent arrears of the sum sought of £2,950.00, which sum remains outstanding. Rent of £500.00 per month was due in terms of Clause 7 of the tenancy agreement. Accordingly, the Tribunal shall make an order for payment of that sum.

Decision

In these circumstances, the Tribunal will make an order for payment by the Respondent to the Applicant of the sum of £2,950.00.

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

06/11/2020

Legal Member/Chair

Date