



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/20/0556

Re: Property at 16 Luing, Airdrie, ML6 8EB (“the Property”)

Parties:

Mr Scott McLean, 147 Luing, Airdrie, ML6 8EB (“the Applicant”)

Mr Stephen McGuinness, Ms Lisa Taylor, 16 Luing, Airdrie, ML6 8EB (“the Respondents”)

Tribunal Members:

Jim Bauld (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order should be granted for payment against the respondent, Lisa Taylor in the Sum of TWELVE THOUSAND AND SIX HUNDRED POUNDS (£12,600.00)

Background

1. Two separate applications had been lodged by the applicant seeking firstly, an eviction order in respect of a private residential Tenancy (FTS/HPC/EV/20/0555) and secondly, an order for payment of rent arrears arising from that tenancy (FTS/HPC/CV/20/0556).
2. The applications have not been formally conjoined but have been linked and a Case Management Discussion (“CMD”) in respect of both applications took

place on 16 October 2020. At the conclusion of the CMD , the tribunal decided that a full hearing should take place. The hearing was fixed for 18 December at 10.00 am and appropriate intimation of the hearing was sent to the parties

The hearing

3. The hearing took place on 18 December 2020 via telephone case conference
The applicant took part in the telephone case conference. Neither of the named respondents took part in the telephone case conference .
4. The tribunal explained the purpose of the hearing and the powers available to the tribunal to determine matters.
5. The tribunal asked various questions of the applicant with regard to the applications.
6. The applicant was questioned by the tribunal with regard to the tenancy which had been created.
7. He stated that he had decided to let out his flat at a time when he had moved to stay with his girlfriend. He advertised the flat on the Gumtree website and received a call from the respondent Lisa Taylor. He met with her and agreed that she could rent the flat. They agreed a rent of £450 per month. She paid him the first month's rent. He gave for the keys and she moved in.
8. The applicant is registered as a landlord with the local authority although he had never previously let out any property before.
9. He indicated that a friends wife, Amy Arnott, drew up a handwritten tenancy agreement which he handed to Miss Taylor and asked her to sign it and return it to him.. Miss Taylor has never returned this written agreement to him.
10. He indicated that he is aware that Miss Taylor has a boyfriend who was staying with her and her children in the flat.. The tribunal noted there had been some confusion with regard to the surname name of this boyfriend. Miss Taylor had confirmed at the CMD that his surname was McInnes not McGuinness. The applicant's position was that no matter what the name, he now accepted that the boyfriend was not a party to the tenancy.
11. The applicant indicated that he received payment of the first month's rent in cash from Miss Taylor. He then returned to the property approximately a week

later to ask for a deposit of £450 which he indicated was paid by cash payments over a period of three weeks. He had been advised to obtain a deposit. He had not lodged this deposit with a tenancy deposit scheme.

12. The applicant then stated that since receiving those initial payment totalling £900 in respect of the first month's rent and the deposit he has not received a single penny from Miss Taylor. He indicated that he attended at the property regularly seeking rental payments but was given various excuses by Miss Taylor.
13. The applicant indicated that he is in full-time employment and has been with his current employer for 23 years. He purchased the property approximately 15 years ago and initially lived in it until he moved out to stay with his girlfriend. He is now living with his mother.
14. The applicant confirmed that he wished the tribunal to grant the order for payment of the amount claimed as amended at the CMD, namely £12,600.

Findings in Fact

15. The applicant and the Respondent as respectively the landlord and tenant entered into a tenancy of the property which commenced on or around May 2018
16. The tenancy was a private residential tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016.
17. The agreed monthly rental was £450.
18. Arrears began to accrue from June 2018.
19. At the date of the lodging of the application arrears amounted to £9,450.00
20. The amount of arrears at the date of the CMD on 16 October 2020 were £12,600 which exceeded one month's rent
21. No payments had been made towards rent or arrears between the date of the CMD and the hearing on 18 December 2020
22. The basis for the order for Payment was accordingly established

Reasons for decision

23. This is an unusual case. There is no written tenancy agreement produced in respect of the tenancy. However both the applicant and Miss Lisa Taylor have confirmed to the tribunal that they agreed that Miss Taylor would rent the property from the applicant. The absence of a written tenancy agreement does not affect the validity of the tenancy. By law that tenancy is a private residential tenancy in terms of the relevant legislation.
24. At the CMD, Miss Taylor accepted that she had missed some payments of rent during a period when her child was in hospital. The applicant's position is that Miss Taylor has never paid anything since the initial payment. At the conclusion of the CMD the tribunal issued a note. In that note the tribunal indicated to Miss Taylor that she should produce to the tribunal evidence of the payments she claimed that she had made. The tribunal notes that no evidence has been lodged and that Miss Taylor did not attend the hearing.
25. The tribunal has noted the evidence given by the applicant at the hearing and the evidence provided by Miss Taylor at the CMD. The tribunal accepts the evidence of the applicant that he has received no payment of rent in respect of this property since the first payment was made by Miss Taylor.
26. The tribunal also accepts the evidence given by Miss Taylor, and now accepted by the applicant, that the tenancy did not involve Mr McInnes. The tribunal accordingly notes that although an application was lodged against Stephen McGuinness that any orders to be granted should only be granted against Lisa Taylor. The tribunal will make no orders against "Stephen McGuinness" .
27. Although the applicant was unable to produce any documentation in relation to the tenancy the tribunal accepted that he gave his evidence at the hearing in an honest and open manner. He accepted that he had not kept appropriate records. He seemed to accept that his manner of dealing with important documentation was not satisfactory and that he would retain important correspondence in the future.

28. The tribunal accepts that the respondent in this case has not paid rent for the considerable period of time. Even from her own admission at the CMD she was is in arrears of rent and has been in arrears since at least October 2018. The tribunal notes she has failed to produce any proof of her claims to have made payments and her failure to attend the hearing
29. The tribunal therefore accepts the evidence of the applicant that the rental arrears are as stated in his application as amended at the CMD. The arrears at the date of the CMD amounted to £12,600 and a payment order in that amount will be made against Lisa Taylor

Decision

The order for payment of the sum of £12.600 is granted against Lisa Taylor only .

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. B

18th December 2020

Legal Member/Chair

Date