



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/19/0976

Re: Property at Flat C, 150 Paisley Road, Renfrew, PA4 4DA (“the Property”)

Parties:

Mr Derek Kennedy, 8 Glen Avenue, Glasgow, G78 3PG (“the Applicant”)

Mr Jarrell De'Christ, Flat 1/3, 30 Midlock Street, Glasgow, G51 1SF (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision

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

Background

This is an application for a payment order dated 26th March 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 his application payment of arrears in rental payments of £850.00 in relation to the Property from the Respondent, and provided with his application copies of the Private Residential Tenancy agreement and rent arrears statement.

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

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 16th May 2019, and I was provided with the execution of service.

A Case Management Discussion was held on 18th June 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant did not appear, but was represented by Mr Nixon, letting agent. The Respondent also appeared, and was not represented.

Mr Nixon explained that the sum sought in the original application form represented two month's rental. There was now four months' rental outstanding, totalling £1,700.00, and he produced an up-dated copy rent arrears statement disclosing this amount. Mr Nixon explained that the Respondent had quit the Property around the middle of May 2019.

The Respondent confirmed that he had quit the Property around the middle of May 2019, and provided the Tribunal with his new address of Flat 1/3, 30 Midlock Street, Glasgow, G51 1SF.

The Respondent accepted that some rent arrears were due by him to the Applicant, however, he thought that only about one or two months were outstanding, and he offered to check his bank account to confirm the amount.

He also produced a letter he had received from Renfrewshire Council dated 15th March 2019, but he was unsure of what the effect of it was.

The Tribunal and Mr Nixon examined the letter, which enclosed a rent penalty notice relating to the Applicant and the Property with a date of commencement of 29th March 2019. This notice was issued apparently with respect to the failure of the Applicant to renew his landlord registration, and indicated that no rent was payable from the date of the notice in respect of the parties' tenancy agreement until the notice was revoked.

Mr Nixon was unaware of the existence of the notice, and understandably sought a brief adjournment of the Case Management Discussion to allow him to investigate. The Tribunal was happy to allow him that opportunity in the circumstances.

Upon resuming the Case management Discussion, Mr Nixon confirmed that the notice had been revoked on 5th June 2019. As the Respondent had quit the Property by that date, the effect of the notice was that rent was only due up until 28th March 2019.

Mr Nixon had helpfully calculated that the rent arrears outstanding for the period up until 29th March 2019 was £536.78, which was the amount he now sought in this application.

The Respondent confirmed that he accepted that this sum was what he was due to the Applicant in rent arrears, and Mr Nixon accordingly invited the Tribunal to make an order for payment of this amount.

The Respondent confirmed that he could not resist the granting of the order, but indicated that he was unable to pay this amount as one lump sum.

The Tribunal brought the Respondent's attention to the possibility of his making an application for a time to pay direction in terms of Rule 41H of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, and the Respondent indicated that he wished to do this.

The Tribunal clerk provided the Respondent with the appropriate application form, and the Tribunal explained the procedure to the parties.

Both parties were anxious to resolve matters swiftly, and the Respondent indicated that he could complete and return the application form to the Tribunal by Monday 24th June 2019.

The Tribunal agreed to issue a Direction to the Respondent to return the completed application form by close of business on Monday 24th June 2019, and to continue this Case Management Discussion to a further date.

The Respondent complied with the direction and submitted a time to pay application containing an offer of instalments of £30.00 per month. The Applicant did not accept this offer, on the basis that it would take approximately 18 months for the sum due to be paid.

Continued Case Management Discussion

A continued Case Management Discussion was held on 30th July 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant did not appear, but was again represented by Mr Nixon, letting agent. The Respondent also again appeared, and was not represented.

The continued Case Management Discussion was held for the purpose of conducting a hearing on the Respondent's time to pay application.

The Respondent advised the Tribunal that he had only £55.00 per month left after paying his various outlays from his salary. Some months he required money to pay for birthday presents for his children and family, and other occasional outlays. For that reason, he needed to retain £25.00 per month for those purposes.

Mr Nixon noted that the tenancy deposit of £425.00 was the subject of dispute between the parties. The parties were currently involved in the tenancy deposit scheme dispute procedure regarding how much (if any) of the deposit should be returned to the Respondent.

Mr Nixon confirmed that the Applicant contended that the deposit should be paid to him, in respect of £145.00 he spent on cleaning the Property at the end of the tenancy, £140.00 he spent on clearing the Property and on repairs to damage caused by the Respondent, and £140.00 in respect of rent arrears.

Mr Nixon suggested that if the Respondent undertook to accept that £140.00 of the deposit in respect of rent arrears should be paid from the tenancy deposit to the Applicant, then that would reduce the amount of arrears to £396.78. The parties could then continue with the tenancy deposit scheme dispute procedure in respect of the contested element of the remaining £285.00.

The Respondent indicated to the Tribunal that he was content for that to happen. He undertook to inform the tenancy deposit scheme that he accepted that £140.00 of the deposit should be paid to the Applicant in respect of rent arrears, and that the parties could then continue with the procedure in respect of the remaining £285.00 which he did contest.

On the basis that the Tribunal noted that undertaking from the Respondent, Mr Nixon confirmed he was content for the Tribunal to make an order for payment of the reduced sum of £396.78, and was content in those circumstances for it to make a time to pay direction of monthly instalments of £30.00. The parties agreed that the first payment should be made on 15th August 2019.

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, the copy rent arrears statement provided, and the submissions made by the parties in relation thereto and in relation to the Respondent's application for a time to pay direction, and was satisfied that these disclosed an outstanding balance of rent arrears in the sum sought of £396.78 upon the basis that the Applicant will be repaid £140.00 from the tenancy deposit.

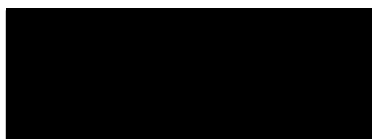
Accordingly, the Tribunal shall make an order for payment of that sum, with a time to pay direction of monthly instalments of £30.00 commencing with a first payment on 15th August 2019.

Decision

In these circumstances, the Tribunal will make an order for payment by the Respondent to the Applicant of the sum of £396.78, with a time to pay direction under Section 1(1) of the Debtors (Scotland) Act 1987 of £30.00 per month until the full amount has been paid, with the first payment to be made no later than 15th August 2019 after intimation of the order.

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.



Legal Member/Chair

30/07/19

Date