

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 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/19/1089

Re: Property at Flat 3/2, 51 Broomlands Street, Paisley, PA1 2NQ ("the Property")

Parties:

Mr Hendrik Lambrecht, Balvonie House, Halketburn Road, Skelmorlie, PA17 5BP ("the Applicant")

MR Craig Patterson, Flat 3/2, 51 Broomlands Street, Paisley, PA1 2NQ ("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 8th April 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 £4,000.00 as at the date of the application.

The Applicant provided with his application copies of the short assured tenancy agreement and a rent arrears statement.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 22nd May 2019, and I was provided with the execution of service.

Case Management Discussion

A Case Management Discussion was held on 24th June 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant did not appear, but was represented by his mother-in-law, Mrs Janette McLelland. Her friend, Mr Barnett, accompanied her as a supporter. The Respondent did not appear, nor was he represented. The Respondent had not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal noted that the parties had entered into a succession of consecutive short assured tenancies in relation to the Property. The last such agreement was a purported short assured tenancy agreement which was dated 9th August 2018 and commenced on the same date.

In terms of the *Private Housing (Tenancies) Scotland Act 2016* ("the Act"), with effect from 1st December 2017, a residential tenancy such as this entered into between parties from or after that date is a private residential tenancy.

However, in terms of the Act, a purported contract (such as the short assured tenancy agreement here) becomes lawfully constituted as a private residential tenancy if certain criteria set out in the Act and schedule 1 thereto are met.

The Tribunal explained the above to Mrs McLelland, and thereafter addressed those criteria with her to satisfy itself that the agreement between the parties became lawfully constituted as a private residential tenancy agreement. Having done so, the Tribunal was so satisfied.

The Tribunal was invited by Mrs McLelland with reference to the application and papers to grant an order for payment of the sum of £4,000.00, which is the amount of rent arrears outstanding as at the date this application was first made. She confirmed that no further payments have been received from the Respondent since this application was lodged.

Rental of £400.00 per month was payable in advance in terms of the tenancy agreement. No payment has been received from the Respondent in respect of the payments due since 17th May 2018, which constitutes some ten months of arrears up to and including 8th April 2019.

Statement of Reasons

The Tribunal was satisfied that the tenancy agreement entered into by the parties in relation to the Property was sufficient to lawfully constitute a private Residential tenancy in terms of the Act.

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 tenancy agreement, the copy rent arrears statement provided, and the submissions made by Mrs McLelland, and was satisfied that these disclosed an outstanding balance of rent arrears in the sum sought of £4,000.00.

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 £4,000.00.

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.

Neil Kinnear

Legal Member/Chair

24/06/19

Date