



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) Act 2016

Chamber Ref: FTS/HPC/CV/20/1996

Re: Property at 50 Howden Avenue, Kilwinning, KA13 7AN (“the Property”)

Parties:

Ms Angela Bruce, 23 Poplar Way, Ayr, KA7 3PQ (“the Applicant”)

Mrs Lisa McMillan, C/O 25 Morven Avenue, Kilmarnock, KA3 2AL (“the first respondent”) and Mr Ryan McAllister, residing at C/O 25 Morven Avenue, aforesaid (“the second respondent”)

David M Preston (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the Respondents in the sum of THREE THOUSAND THREE HUNDRED AND SEVENTEEN POUNDS AND 08 PENCE (£3317.08) and GRANTED a Time to Pay application by the first named respondent dated 19 October 2020 at the rate of £100 per fortnight.

Background:

1. By application dated 16 September 2020 the applicants applied to the Tribunal for an order for payment on the grounds that the respondents had left the tenancy at the property on 20 July 2020 having accrued rent arrears amounting to £396 and had caused damage to the property in respect of which the applicant incurred costs totalling £2921.08 as detailed in the application and supporting papers.
2. By Notice of Acceptance dated 5 October 2020 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD along with a copy of the application and supporting documentation was served on the respondents by Sheriff Officers on 16 October 2020, conform the Certificate of Citation of that date.
4. The tribunal had before it: Application Form dated 16 September 2020; copy Private Printed Tenancy Agreement dated 26 November 2019; Rent Statement covering the period 27 November 2019 to 27 June 2020; correspondence between the applicants and the respondents; copy bank statements; and copy vouchers in respect of outlays and expenses incurred.
5. By Time to Pay by Application dated 19 October 2020 the first named respondent admitted the claim and offered to make payment by instalments at the rate of £100 per fortnight. The applicant responded to the application and indicated that she was prepared to accept the payment offer against both respondents. The first named respondent advised that the application was for both herself and the second named respondent, although the application contains no details or finances for the second named respondent. The first named respondent was asked to submit an additional application or to formally include the second named respondent in the application. She did not do so.

The CMD

6. On 18 November 2020 a CMD was convened by telephone in accordance with the provisions for dealing with business during the COVID-19 pandemic. Present by telephone at the CMD was the applicant. There was no attendance by or on behalf of the respondents. The tribunal waited until 1005 to provide the respondents with an opportunity to participate.
7. The tribunal on being satisfied that the respondents had been given proper notice of the CMD by Sheriff Officers, determined in accordance with Rule 29 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016 ("the 2016 Rules") to consider the application in their absence.
8. The tribunal was satisfied that the respondents had been duly notified and cited to attend the CMD but had voluntarily waived their right to do so or to be represented. The applicant confirmed that she was prepared to accept the Time to Pay Application in respect of the first named respondent but wished to obtain an order against both respondents as she believed that the second respondent worked as a painter and decorator.
9. The tribunal considered that the second named respondent had been duly served with intimation of the CMD and had failed to respond despite the first named respondent having been requested to include him in the Time to Pay Application.

10. Accordingly, the tribunal granted an order against the parties in respect of the sum sought and granted a time to pay Direction quoad the first named respondent.

Reasons for Decision

11. Rule 17 of the Regulations states that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision. The tribunal decided that, on the basis of the information before it, it was in a position to make a decision without further enquiry.

12. The tribunal was satisfied from the evidence provided in the written submissions and by the applicant at the CMD that the parties had entered into a Private Residential Tenancy Agreement at a rent of £495 per month which had come to an end on 27 June 2020. The tribunal was also satisfied that the respondents had failed to pay the pro rata rent due for the period 31 May 2020 to 27 June 2020 in the sum of £396 and had left the property in such a condition as required the applicant to pay out the sum of £2921.08 and the applicant was entitled to an order for payment of £3317.08.

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.

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