



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 (“the Act”) and Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/CV/22/3151

The Parties:

Mr. Ian Duff residing at 23, Fir Park, Tillicoultry, FK13 6PX (“the Applicant”) per his agent, Mr. Calvin Gordon, Solicitor, McEwan Fraser Legal, Claremont House, 130 East Claremont Street, Edinburgh, EH7 4LB (“the Applicant’s Agent”)

Mr. Aaron Cummings, last known address care of Legal Services Agency, 134, Renfrew Street, Glasgow G3 6ST and present whereabouts unknown (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for Payment in the sum of £8,850.00 be granted.

Background

1. By application received between 7 March 2022 and 14 April 2022 (“the Application”), the Applicant’s then agent, Mr. Michael Duff, applied to the tribunal for an Order for payment of the sum of £8,850.00 in loss of rent and damage to carpets arising from a tenancy agreement between the Parties and that in terms of Rule 111 of the Rules.
2. The Application set out that a tenancy began on or around 20 October 2020 and ended on or around 6 May 2021. The Application explained that no written tenancy was entered into but that rent of £1,300.00 and tenancy deposit of £1,300.00 had been paid to the Applicant by the Respondent. Accordingly, a private residential tenancy (“the PRT”) had been created by virtue of Section 3 of the Act.
3. The Application stated further that the Applicant had been induced to enter into the PRT by fraudulent misrepresentations made to him by the Respondent and that the Applicant sought to reduce the PRT by way of a separate application to the tribunal.

4. The Application narrated that in the event of the PRT being reduced by the tribunal, the Applicant sought to recover the sum due by delictual damages arising from the Respondent's fraud. The Application provided documentary evidence of the condition of the carpet at the Property and stated that no further rent had been paid by the Respondent to the Applicant.
5. The Application was accepted by the Tribunal Chamber and allocated to the Tribunal.
6. The Tribunal was aware from other proceedings between the Parties which were before the Tribunal that the Respondent had instructed Mr. Christman of Legal Services Agency, 134, Renfrew Street, Glasgow G3 6ST to act on his behalf, the other proceedings being an application by the Respondent against the Applicant for compensation in terms of The Tenancy Deposit Schemes (Scotland) Regulations 2011. Mr. Christman had indicated to the Tribunal that he was to be instructed in these proceedings and also in respect of the proceedings seeking to reduce the PRT. Therefore, the Tribunal issued a Direction for all three applications as follows:-
 - "1. The Applicant is directed to disclose his address to the Tribunal and the Respondent and the Respondent's Representative, failing which he is directed to submit a list of legal authorities in support of his position that he should not be required to disclose his address in the present proceedings. The said documentation should be lodged with the Tribunal and copied to the other Party no later than close of business on the day which falls fourteen days before the date of the case management discussions to be fixed and intimated to the Parties; and*
 - 2. The administration of the First-tier Tribunal for Scotland Housing and Property Chamber is directed to:*
 - (i) to fix a case management discussion in terms of Rule 17 of the Rules for the present proceedings;*
 - (ii) to fix case management discussions in terms of Rule 17 of the Rules for the cases referenced FTS/HPC/CV/21/3151 and FTS/HPC/CV/22/0697 on the same date and at the same time as the case management discussion fixed for these proceedings and*
 - (iii) to intimate the date of the case management discussions on the Applicant both at his last know care of address and by advertisement on the Chamber's website and on the Respondent and the Respondent's Representative at their address at 23, Fir Park, Tilllicoultry, FK13 6PX".*
7. A Case Management Discussion ("CMD") was fixed for 29 July 2022 at 10.00 by telephone conference and was intimated to the Respondent at his last know care of address and by advertisement on the Chamber's website.
8. Immediately before the CMD for these proceedings, the Tribunal heard the CMD in respect of FTS/HPC/CV/22/0697 and granted an Order against the Respondent in favour of the Applicant reducing the tenancy agreement between the Parties to the effect that the PRT is void *ab initio*.

Case Management Discussion

9. The CMD took place on 29 July 2022 at 10.00 by telephone conference. Neither the Applicant nor the Respondent took part. The Applicant was represented by Mr. Gordon. The Respondent was not represented and had not submitted written representations. The Tribunal, being satisfied that the Respondent is aware of the proceedings and that the CMD had been intimated to the Respondent, proceeded with the CMD in his absence.

10. On behalf of the Applicant, Mr. Gordon moved that the Order be granted as set out in the Application and the accompanying documents. Mr. Gordon advised that the Applicant had been unable to trace an invoice or receipt for the damage to the carpet but confirmed that the carpet had been damaged. He confirmed that further rent amounting to £8,850.00 ought to have been paid by the Respondent until the PRT ended but that it had not been paid. Accordingly, the sum sought in damages is £8,850.00.

Findings in Fact

11. The Tribunal had regard to the Application and the detailed submissions and documentary evidence, which were submitted subsequently, none of which was challenged by or on behalf of the Respondent, and to the CMD. The Tribunal made the following findings in fact on the balance of probabilities: -
 - i) There had been PRT tenancy of the Property between the Parties which began on or around 20 October 2020 and ended on or around 6 May 2021 on 12 December 2015;
 - ii) No written tenancy agreement was entered into and the PRT was constituted by operation of Sections 1 and 3 of the Act;
 - iii) The Parties had agreed the sum of £1,300.00 per month in rent;
 - iv) The Respondent only paid one month of rent to the Applicant;
 - v) The PRT was reduced by separate Order of the Tribunal based on the Respondent's fraud on the Applicant;
 - vi) The Respondent resided in the Property until on or around 6 May 2021;
 - vii) The Respondent caused damage to the carpet in the Property to a cost of £400.00;
 - viii) The Applicant's loss in respect of unpaid rent or rental revenue is £8,450.00 to from 20 November 2021 to 6 May 2021;
 - ix) The Applicant's total loss of £8,850.00 is a direct result of the Respondent's fraud and
 - x) The Applicant is entitled to damages for this loss from the Respondent.

Decision and Reasons for Decision

12. The Tribunal had regard to Section 71 of the Act which states "*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) and (b) a sheriff does not have competence or jurisdiction.*" A sheriff has competence and jurisdiction to award damages in delict in respect of loss suffered as a consequence of fraud. The Application is civil proceedings which arise from a fraud on a private residential tenancy. The Tribunal considered if the fact that the PRT had been

reduced as void *ab initio* had any bearing on jurisdiction. The Tribunal took the view that it did not. The Tribunal took the view that Section 71 of the Act is worded sufficiently widely to include civil proceedings arising from a private residential tenancy which is no longer extant. The Tribunal had regard to the purpose of Section 71 of the Act, which purpose was to transfer the functions of the sheriff to the First-tier tribunal in respect of civil proceedings arising from a private residential tenancy and took the view that Scottish Government's intention was to transfer all civil proceedings as no conditions or exceptions have been applied by the Act. The Tribunal took the view that, in any event, the overriding criterion in this case is that, had there been no private residential tenancy, there would have been no fraud and no damages arising from that fraud, and, so the logical and sensible of interpretation of Section 71 of the Act is that it applies in these circumstances, where the tenancy has been reduced. The Tribunal drew a comparison with civil proceedings arising from former tenant arrears which are competent in terms of Rule 111 regardless of whether the private residential tenancy has been terminated and took the view that the Application is broadly similar as its foundation is the PRT which was in force at the time when the loss was incurred. Accordingly, the Tribunal has jurisdiction.

13. Having found that the Respondent is liable to the Applicant in damages, the Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal "may do anything at a case management discussionincluding making a decision" and so proceeded to make an order to for payment in the sum of £8,850.00.

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.

Karen Moore

Legal Member/Chair

29 July 2022
Date