



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

Chamber Ref: FTS/HPC/CV/22/2786

Property at Flat 2/R, 10 Molison Street, Dundee, DD4 6TH (“the Property”)

Parties:

Mr Jack McKeown, 4 Inverary Terrace, Dundee, DD3 6BS (“the Applicant”)

Mr Darren McIntosh, Flat 2/R, 10 Molison Street, Dundee, DD4 6TH (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and David Fotheringham (Ordinary 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 for the sum of £3902.50 should be granted against the Respondent in favour of the Applicant.

Background

1. The Applicant seeks an order for payment in terms of section 71 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). A copy tenancy agreement and rent statement were lodged in support of the application. A related application for an eviction order under Chamber reference EV/22/2785 (“the eviction application”), was also submitted
2. A copy of both applications and supporting documents were served on the Respondent by Sheriff Officer. Both parties were advised that a Case Management Discussion (“CMD”) would take place on 24 November 2022 at 10am by telephone case conference and that they were required to participate. On 7 November 2022 the Applicant lodged an updated rent statement with a

written request to amend the application to reflect the current balance due.

3. The CMD took place at 10am on 24 November 2022. The Applicant was represented by Mr Smith, the letting agent. The Respondent did not participate and was not represented.

The CMD

4. Mr Smith told the Tribunal that there has been no recent contact with the Respondent but that he is still residing at the property. He confirmed that the Applicant seeks a payment order. In response to questions about the updated rent statement, Mr Smith conceded that this shows the arrears which will be due on 30 November 2022. It therefore includes 6 days of rent which are not yet due. Mr Smith advised the Tribunal that he wished to amend the sum on the updated rent statement to £3902.50, being the sum outstanding on 24 November 2022. The Tribunal granted the request to amend the application
5. Mr Smith stated that the last contact with the Respondent was on 5 July 2022. The Respondent apologised that he had not been in contact recently and mentioned that he was having difficulty seeing his children and was going to apply for custody. He has not responded to the agent's emails since that time. In response to questions from the Tribunal about the pre action correspondence issued to the Respondent, Mr Smith said that prior to the Notice to leave and pre action letters, there had been regular contact with the Respondent by telephone and email, in relation to the rent arrears, and that the Respondent previously engaged well. Mr Smith confirmed that the Respondent resides at the property alone. It is a one-bedroom flat. Whenever inspections and/or visits by contractors have taken place there has been no evidence of children staying there or visiting. The Respondent was working at the start of the tenancy. His current employment status is unknown. The Applicant made an application for direct payments from Universal Credit. This was declined because the Respondent did not receive the benefit. Mr Smith said that he was unable to provide information regarding health issues or other factors which might impact on the Respondent's ability to pay rent but stated that the Respondent had told him that he was stressed and worried about his children and his lack of contact with them. The current position regarding that situation is unknown. There have been no payments to the rent account since 16 June 2022 and no explanation provided for this.
6. In response to questions from the Tribunal about the Applicant, Mr Smith said that he has a portfolio of about 8 properties. There is a mortgage over the property and the rent arrears have had a financial impact as the mortgage payments are having to be met from other sources. To his knowledge, the Applicant intends to re-let the property if an eviction order is granted.

Findings in Fact

7. The Applicant is the owner and landlord of the property.

8. The Respondent is the tenant of the property in terms of a private residential tenancy agreement.
9. The Respondent is due to pay rent at the rate of £475 per month.
10. The Respondent has been in arrears of rent since June 2021.
11. The Respondent owes the sum of £3902.50 in unpaid rent to the Applicant.

Reasons for Decision

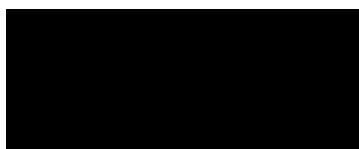
12. From the information provided at the CMD, and the documents lodged with the application and prior to the CMD, the Tribunal is satisfied that the Respondent has incurred rent arrears of £3902.50. No payments to the rent account have been made since June 2022 and the Respondent is not engaging with the letting agent. He has offered no explanation for non-payment. The Tribunal is therefore satisfied that the Applicant is entitled to an order for payment for the sum of £3902.50.

Decision

13. The Tribunal determines that an order for payment order should be granted against the Respondent.

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.



Josephine Bonnar, Legal Member

24 November 2022