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 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/19/1911

Re: Property at 7 Netherthird Place, Cumnock, Ayrshire, KA18 2BS ("the Property")

Parties:

Mr Jordan Thomson, 32 Bellside Road, Cleland, Motherwell, ML1 5NU ("the Applicant")

Mr Jordan Hunter, Mr Mickey Lee Mayo, both formerly residing at 7 Netherthird Place, Cumnock, Ayrshire, KA18 2BS, and whose present whereabouts are unknown ("the Respondents")

Tribunal Members:

Neil Kinnear (Legal Member)

Decision (in absence of the Applicant and the Respondents)

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

Background

This is an application for a payment order dated 19th June 2019 and brought in terms of Rule 70 (Application for civil proceedings in relation to an assured tenancy under the 1988 Act) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant seeks payment of arrears in rental payments of £4,283.00 due by the Respondents in respect of their tenancy of the Property.

The Applicant provided with his application copies of a private residential tenancy agreement, and rent arrears statements.

The Respondents could not be validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal, as they could not be traced and their current whereabouts are unknown.

Service was validly effected by advertisement upon her in terms of Rule 6A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, and the Tribunal was provided with the Certificate of Service by advertisement.

Case Management Discussion

A Case Management Discussion was held on 12th March 2020 at Russell House, King Street, Ayr. The Applicant did not appear, and was not represented. The Respondents did not appear, nor were they represented. The Respondents have not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal noted that this application is brought in terms of Rule 70 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, which rule relates to assured tenancy agreements.

The lease agreement here is a private residential tenancy agreement with a start date of 1st September 2018. It would appear that this application ought to have been brought in terms of Rule 111 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, which concerns private residential tenancy agreements.

The Tribunal further noted that the rent arrears statements provided appear to total substantially more than the sum sought in this application.

In any event, neither the Applicant, nor his representative, his father William Strain, attended the Case Management Discussion which had been duly intimated to Mr Strain by letter dated 7th February 2020.

The Tribunal noted that it has had no communications from either the Applicant or Mr Strain since 15th November 2019. There has been no response to any of the Tribunal's correspondence since that date.

Statement of Reasons

Section 16 of the *Housing (Scotland) Act 2014* provides as follows:

"16. Regulated and assured tenancies etc.
(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2)But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3)Part 1 of schedule 1 makes minor and consequential amendments."

Accordingly, the Tribunal now has jurisdiction in relation to claims by a landlord (such as the Applicant) for payment of unpaid rental and damages against a tenant (such as the Respondents) under an assured tenancy.

However, the lease agreement in this application is not an assured tenancy, and accordingly this application is not competent in terms of the *Housing (Scotland) Act 2014* and Rule 70 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Tribunal might have been prepared to entertain a request to amend this application to one brought under Rule 111 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, which applies to private residential tenancies in terms of section 71 of the *Private Housing (Tenancies) (Scotland) Act 2016*.

However, no such request has been made, and neither the Applicant nor his representative have attended the Case Management Discussion which has been properly intimated. Indeed, the Tribunal has had no response from the Applicant's representative for a period of 4 months as earlier noted.

Further, in the absence of any communication on behalf of the Applicant for a relatively lengthy period, the Tribunal cannot know if he continues to insist in this application, and accordingly does not consider it should grant any order in those circumstances.

Decision

For the above reasons, the Tribunal dismissed the application and refused the order sought.

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

12/03/20
_____
Date