



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/21/3051

Re: Property at 133 Strawberry Bank Parade, Aberdeen, AB11 6UW (“the Property”)

Parties:

Mrs Carol Moreton, 2 Aitken Den, Arbroath, Angus, DD11 4QS (“the Applicant”)

Ms Lauren Baird, 133 Strawberry Bank Parade, Aberdeen, AB11 6UW (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member) and Sandra Brydon (Ordinary Member)

1. Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the respondent shall make payment to the applicant of the sum of two thousand seven hundred and twenty three pounds (£2723).

2. This was a second case management discussion ‘CMD’ in connection with an application in terms of rule 111 of the First-tier Tribunal for Scotland (Procedure) Regulations 2017 (‘the rules’), to recover rent arrears arising out of a Private Residential Tenancy (‘PRT’). There was a second application before the tribunal for eviction. The applicant was represented by Ms Lesley Black, Leasing Manager of Caroline Walker Leasing Ltd. The respondent did not attend and was not represented. A first CMD on 17 March 2022 was adjourned to today and the tribunal made a direction for the applicant to lodge an up to date rent statement.

3. The respondent did not attend the first CMD and the tribunal, having sight of the sheriff officer's execution of service on that date, proceeded in her absence in terms of rule 24 and 29 of the tribunal rules. The respondent received intimation of today's adjourned CMD via email and the tribunal was satisfied that the respondent was aware of the CMD. The tribunal accordingly proceeded in her absence.
4. The tribunal had before it the following copy documents: -
 - (1) Application dated 2 December 2021.
 - (2) Private Residential Tenancy Agreement 'PRT' between 'Gardenstream' and the respondent dated 6 July 2020.
 - (3) Notice to leave erroneously dated 6 October 2021.
 - (4) Email with notice to leave dated 6 April 2021.
 - (5) Land Certificate.
 - (6) Rent statement.
 - (7) Companies House documentation regarding Gardenstream Ltd.
 - (8) Mandate signed by Carol Moreton.
 - (9) Letter from Tribunal to Caroline Walker Property Leasing Ltd dated 21 December 2021 January 2022.
 - (10) Email from Caroline Walker Property Leasing Ltd to the Tribunal dated 22 December 2021.
 - (11) Rent statement dated 6 April 2022.

Preliminary matters

5. The first matter to be clarified was in relation to the landlord. At the first CMD the tribunal noted that the applicant is the owner of the property, and she is the registered landlord, but she is not the landlord noted on the PRT. The applicant appears to be a shareholder of Gardenstream Ltd. It was not clear to the tribunal what authority 'Gardenstream' (as opposed to Gardenstream Ltd) had to grant the PRT and be landlords of the property. In any event, the application was not in the name of the landlord.
6. The applicant's representatives wrote to the tribunal on 6 April 2022 to lodge the rent statement and other matters in compliance with the tribunal's directions regarding the eviction application. They stated that the reference to 'Gardenstream' in the PRT was 'a clerical error on their part as they manage over 90 properties on behalf of Moreton/ Gardenstream Ltd family'. They also stated that they had sought legal advice and were advised that they had provided enough evidence to confirm that Carol Moreton is the owner and landlord of the property.

7. The tribunal considered this point carefully and concluded that Mrs Moreton, as owner and registered landlord of the property is therefore entitled to seek both an order for rent arrears and indeed eviction. In reaching its decision the tribunal took into account s45 of the Act which states that:

“When ownership of a property is let under a private residential tenancy is transferred, the landlord’s interest under the tenancy transfers with it”.

8. This provision means that, had Mrs Moreton become the owner of the property after the lease was drawn up, she would have become the landlord by virtue of being the owner. The tribunal was therefore satisfied that the applicant is the owner and landlord of the lease, despite the error in the PRT naming Gardenstream.

9. Findings in fact

- The applicant is the owner and landlord of the property.
- The parties entered into a PRT for let of the property in July 2020.
- The agreed monthly rent was £425 per month.
- Rent arrears began to accrue in October 2020.
- The rent arrears in April 2022 were £2723.
- The sum of £2723 remains outstanding.

Reasons

10. This is an undefended application to recover rent arrears arising out of a PRT. The tribunal was satisfied that it had sufficient information before it to make a decision and the procedure had been fair. The tribunal accordingly made an order for the sum of £2723 being the amount of the arrears.

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.

Lesley Ward

Legal Member: Lesley A Ward

Date: 26th April 2022