



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/22/0556

Re: Property at 112 Lesslies Building, Burntisland, KY3 0HB (“the Property”)

Parties:

Ms Lisa Bremner, 306 Main Street, Oswego, IL, 60543, United States (“the Applicant”)

Mr Dean Krumins, 245 Frances Path, Glenrothes, Fife, KY7 6SF (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member)

Decision (in absence of both parties)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the case should be dismissed.

BACKGROUND

1. This was the first case management discussion (CMD) to consider an application by the Applicant for an order for payment in respect of alleged rent arrears from the Respondent who was the tenant in a tenancy with the Applicant where the applicant was the landlord of the Property.
2. The application had been lodged on 23rd February 2022 and sought payment of the sum of £4702.42 in respect of rent arrears the Applicant claimed had not been paid by the Respondent.
3. The following documents were lodged with the Application namely: - a. Tenancy agreement dated 10th July 2020 b. Rent and Transaction statement showing a sum due as at 27th September 2021 of £4702.42 c. Tenant Payment Report showing a total payment sum of £2,950

4. The Tribunal sent a direction on 7th April 2022 asking for: - "Please for ease of reference provide a rent statement in the following format, date, and rent due, rent paid running total of arrears."

5. In response to the direction from the Tribunal the Applicant lodged a revised rent statement showing a sum due of £4,559.42.

6. A CMD was held by teleconference at 2.15pm on 13th June 2022. The Tribunal had a copy of the notification dated 5th May 2022 to both parties. The Applicant's agent did not attend straight away but came on after the clerk called her. Intimation on the respondent was done by sheriff officer leaving the documents at the Respondent address on 6th May 2022. The Respondent did not appear and was not represented. Given however intimation was properly made on the Respondent the Tribunal proceeded in his absence.

7. Ms Debbie Smith from the Applicant's letting agent advised at the first CMD that the Respondent had let the Property from the Applicant from 10th July 2020 to 27th September 2022 at a rent of £435 due monthly.

8. She confirmed the tenant left after a notice to leave was served on him and confirmed she was seeking an order for payment in the sum of £4,559.42 as per the latest statement lodged which is slightly less than the original sum claimed.

9. The legal member asked questions about the rent statement as it appeared to vary from the other two documents lodged with the application entitled rent and transaction details and Tenant payment report. In particular there were two payments recorded in those two documents dated 9th August and 9th November 2020 both for £435 which appear to indicate they were paid by the tenant but are not credited as being paid by him in the latest statement.

10. Ms Smith advised that those payments were probably "guarantee" payments made by the letting agent to the landlord and not payments made by the tenant, she advised that she could ask her finance section if they could produce a statement showing the payments made by the tenant only and confirming what the two further payment of £435 marked as "guarantee" were. The Tribunal adjourned the CMD to see if this information could be made available within an hour but Ms Smith returned to advise she would not be able to provide this information in that timescale or by the end of that afternoon. The Tribunal then confirmed the matter would have to be continued for clarification that these amounts were not paid by the tenant given the wording in the different statements.

11. The Tribunal indicated that the following required to be provided at or prior to the next CMD :- that the Applicant required to provide evidence as to what the two payments dated 9th August 2020 and 9th November 2020 for £435 each and mentioned as payments on the Rent and Transaction Report and Tenant Payment Report were and to confirm they are not payments made by the tenant and that the

Applicant should confirm the final figure they are seeking in rent if it varies from that set out in the latest rent statement which is £4,559.42.

12. The first CMD was then adjourned and Ms Smith was advised it would proceed to a further case management discussion at 10am on 1st August 2022. The Applicant's agent therefore received oral intimation of the date, time and place of the next case management discussion before adjournment of the proceedings on 13 June 2022.

13. Intimation of the outcome of the CMD was then sent to the Applicant's representative at the e-mail address included in the application and used by the representative and written intimation of the date, time and details of the next CMD were sent by e-mail on 24th June 2022.

14. The Tribunal waited until 10.10 to see if either party attended the teleconference call on 1st August 2022. Neither party called in. No written information had been received from the Applicant or her representative since the first CMD. No request for a postponement was received. No explanation or clarification of what payments had been made by the Respondent was therefore available to the Tribunal. The Applicant's representative had been advised both verbally at the previous CMD and in writing of the date and time and details of the CMD and had not attended.

15. The overriding objective of the Tribunal is to act justly. In terms of the Tribunal's rules of procedure, Regulation no 27(2) provides that an application can be dismissed if "a) The Applicant has failed to comply with an order which stated that failure to comply could lead to the dismissal of a case or b) The Applicant has failed to co-operate with the tribunal to such an extent that the tribunal cannot deal with the proceedings justly or fairly?". The Applicant's agent had ample notification both orally and in writing of the CMD. They have not attended or asked for any postponement. They have not provided any further written information since the last CMD despite the legal member clearly indicating clarification of the sums paid by the Respondent during the tenancy were required. In the absence of their appearance at the CMD the Tribunal cannot deal with the proceedings justly or fairly and so determines that the application must be dismissed.

- **Decision**

The Application is dismissed.

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.

J Todd

__1st

August

2022

Legal Member/Chair

Date