



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 70(1) of the Private Housing Tenancies (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/22/2255

Re: Property at 55 Titchfield Way, Girdle Toll, Irvine, KA11 1PP (“the Property”)

Parties:

Mr Barry Mochan, Gair Na Mara, Brodick, Isle Of Arran, KA27 8BX (“the Applicant”)

Mr Christopher Underwood, Laura Spalding, 14 Maxwood Place, Girdle Toll, Irvine, KA11 1QG; [REDACTED] (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision (in absence of the First Named Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to (1) make a payment order in the sum of £3,725.77 against the First Named Respondent only and (2) make a payment order in the sum of £835 against both Respondents

Background

- 1 By application to the Tribunal dated 8 July 2022 the Applicant sought an order for payment of against the Respondents in respect of outstanding rent arrears. In support of the application the Applicant provided the following documentation:-
 - (i) Private Residential Tenancy Agreement between the parties dated 13 March 2019;
 - (ii) Rent Statement; and
 - (iii) Copy correspondence between the parties in the form of letters and emails regarding outstanding rent arrears.

- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 28 November 2022. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondents by Sheriff Officers.

Case Management Discussion

- 3 The Case Management Discussion took place on 28th November 2022 by teleconference. The Applicant was represented by Ms Meaghan McDiarmid. Ms Spalding was present. Mr Underwood was not in attendance. The Tribunal noted that he had been served with a copy of the application paperwork which included notification of the Case Management Discussion and therefore determined to proceed in his absence.
- 4 Ms McDermid advised that the Applicant sought a payment order for the balance of rent owed at the end of the tenancy. She confirmed that the tenancy had been complicated, due to a breakdown in the relationship between the Respondents. Mr Underwood had not applied to have the property in his sole name, therefore Ms Spalding remained as a joint tenant. Communication had been poor. Ms Spalding had emailed to say that she had found another property and was moving out. However both tenants had to agree that the tenancy would convert to a sole tenancy in the name of Mr Underwood. There had been no contact from Mr Underwood therefore Ms Spalding had continued as a joint tenant.
- 5 Ms Spalding addressed the Tribunal. She advised that she had moved out of the property in July 2021 when the relationship with Mr Underwood had broken down as a result of allegations of drug use and domestic abuse. There had been emails back and forth with the Applicant's agent and she understood that Mr Underwood had to take the tenancy in his own name. She had assumed that had taken place. However she started to receive emails when he fell into arrears. She had suffered a bereavement after moving out of the property, namely her son's father, therefore she was unable to recollect some of the detail around that time. She did agree with most of what Ms McDermid had said. Ms Spalding advised that she suffered from depression and anxiety, and received support from a mental health nurse. She had sought advice from CHAP however they were unable to provide legal advice. Ms Spalding confirmed that she was now residing elsewhere and receiving support. She was in employment and therefore it could be difficult to find time to seek advice due to her working hours.

- 6 The Tribunal considered it would be in Ms Spalding's interest to seek legal advice regarding her position if possible and was content to give her that opportunity. The Tribunal therefore determined to adjourn the Case Management Discussion for that purpose.
- 7 The second Case Management Discussion took place on 26 January 2023. Ms McDiarmid represented the Applicant. Ms Spalding was in attendance. Mr Underwood did not attend. The Tribunal noted he had been served with notification of the Case Management Discussion and determined to proceed in his absence.
- 8 Ms Spalding advised that she had been unable to obtain advice from Shelter Scotland despite her best efforts. The opening hours were 9 to 5 and she worked from 8 till 6. She had tried to call during lunch breaks but was constantly on hold. The Legal Member asked Ms McDiarmid what the Applicant's position was, having considered Ms Spalding's submissions at the previous Case Management Discussion. Ms McDiarmid advised that the Applicant would be content with an order against both Respondents for the period up until Ms Spalding left the property, which would be for arrears in the sum of £835, and a further order for the outstanding amount of £3725.77 against Mr Underwood alone. The Legal Member explained the consequences of granting the order against her to Ms Spalding, including the matter of joint and several liability. Ms Spalding thereafter confirmed that she would be content to accept she was liable for the arrears up until the date she left the property and would not object to the granting of the orders on that basis.

Findings in Fact

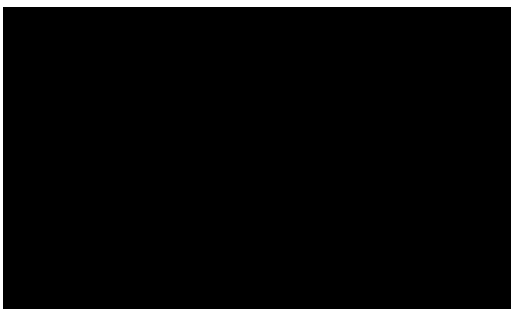
- 9 The parties entered into a Private Residential Tenancy agreement dated 13 March 2019.
- 10 In terms of Clause 8 of the said Tenancy Agreement the Respondents were jointly and severally liable to make payment of rent at the rate of £595 per month.
- 11 The tenancy terminated on 7 July 2022.
- 12 As at the date of termination of the tenancy arrears in the sum of £4560.77 were outstanding.
- 13 The second named Respondent vacated the property in July 2021.

Reasons for Decision

- 14 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. There were no facts in dispute that would require a hearing to be fixed. Mr Underwood had not attended the Case Management Discussion, nor made written representations though he had been given the opportunity to do so. Ms Spalding had confirmed at the Case Management Discussion that she did not object to the granting of an order against her in the terms sought, having received an explanation from the Legal Member as to the consequences of making such an order.
- 15 Based on its findings in fact and the submissions from the parties at the Case Management Discussion the Tribunal therefore determined to make an order against both Respondents in the sum of £835 and an order against Mr Underwood in the sum of £3725.77. The Tribunal considered that it was able to grant said orders on the basis of the joint and several liability of the parties.

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.



Legal Member/Chair

02 February 2023

Date