



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/19/4050

Re: Property at 18 Park Terrace, East Kilbride, G74 1BN (“the Property”)

Parties:

Mr Geoff Stewart, Mrs Lorraine Stewart, Viewfield House, Jackton, East Kilbride, G74 8RR; Viewfield House, Jackton, East Kilbride, G75 8RR (“the Applicants”)

Mr Darryl Paterson, HMP Addiewell, 9 Station Road, West Calder, EH55 8QF (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision (in absence of the Respondent)

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

Background

This is an application for a payment order dated 18th December 2019 and brought in terms of Rule 111 (Application for civil proceedings in relation to a private residential tenancy) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicants sought in their application payment of arrears in rental payments of £2,375.00 due by the Respondent in respect of his tenancy of the Property.

The Applicants provided with their application copies of the tenancy agreement and rent arrears statement.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 3rd March 2020, and the Tribunal was provided with the execution of service.

A Case Management Discussion was set for 2nd April 2020. That Case Management Discussion had to be cancelled as a result of the coronavirus pandemic, and the lockdown imposed in the United Kingdom as a consequence thereof. The Parties were subsequently notified with the details of a Tele-Conference and provided with dial-in details.

A Case Management Discussion was held at 10.00 on 13th July 2020 by Tele-Conference. The Applicants did not participate, but were represented by Mr Coyle, solicitor. The Respondent did not participate, nor was he represented.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

Mr Coyle explained that the parties to this application had been in contact, and that discussions were taking place which it is hoped might resolve the issues between the parties by agreement.

In those circumstances, Mr Coyle invited the Tribunal to continue this matter to allow settlement negotiations to take place, and the Tribunal was happy to accede to that request.

Rule 28 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended allows the Tribunal discretion on its own initiative or on an application by a party, to adjourn a hearing.

The Tribunal considered it to be reasonable to adjourn the Case Management Discussion in the circumstances, and consistent with the overriding objective of the Tribunal to deal with proceedings justly and in a manner which is proportionate to the complexity of the issues and the resources of the parties in terms of Rule 2 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

In these circumstances, the Tribunal set a further Case Management Discussion.

By e-mail to the Tribunal of 7th August 2020, Mr Coyle had intimated an updated statement of rent arrears disclosing that these now stand at £4,525.00.

A continued Case Management Discussion was held at 11.30 on 25th August 2020 by Tele-Conference. The Applicants did not participate, but were again represented by Mr Coyle, solicitor. The Respondent did not participate, nor was he represented.

The Tribunal was again satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The*

First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended.

Mr Coyle advised the Tribunal that after discussions between the parties, they had been unable to resolve this matter. He also advised the Tribunal that the Respondent had now left the Property, and that he understood the Respondent had been arrested and was currently in custody at HMP Barlinnie.

The Tribunal noted that the updated rent arrears statement showed a carried over arrears balance of £700.00 accumulated prior to August 2019. However, no detail was provided as to how and when those arrears accrued, and the figure of £700.00 differed slightly from the figure of £675.00 shown in the earlier rent arrears statement.

Mr Coyle explained that the figure of £700.00 was an error, and that the original figure of £675.00 for arrears up to August 2019 was correct. He acknowledged that there was no explanation as to how and when that amount was accrued, and indicated that he would investigate that matter and incorporate the details into an updated rent arrears statement running till the date when the Respondent quit the Property.

The Tribunal noted that the Applicants might wish to amend the sum sought in the application in terms of Rule 14A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, if they wished to seek more than the figure set out in the original application form. Any such amendment would require to be intimated by the Applicants to both the Tribunal and the Respondent no later than 14 days in advance of any further continued Case Management Discussion set.

Mr Coyle also accepted that the Applicants would need to amend the address of the Respondent given in this application, as he no longer resides there. Mr Coyle indicated that he would investigate the details of the Respondent's current whereabouts, and intimate an amendment to the Respondent's address once he has done so.

The Tribunal clerk confirmed that intimation of today's continued Case Management Discussion had been made on the Respondent by e-mail. If it transpires that the Respondent will remain in custody prior to the further continued Case Management Discussion, then the Tribunal would also intimate the date of that on the Respondent at HMP Barlinnie in case he did not have access to e-mails whilst there.

In those circumstances, Mr Coyle invited the Tribunal to again continue this matter in order to allow him to investigate these matters, and to seek to amend the address of the Respondent and the sum sought, and the Tribunal was content to accede to that request.

Rule 28 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended allows the Tribunal discretion on its own initiative or on an application by a party, to adjourn a hearing.

The Tribunal considered it to be reasonable to adjourn the continued Case Management Discussion in the circumstances, and consistent with the overriding objective of the Tribunal to deal with proceedings justly and in a manner which is

proportionate to the complexity of the issues and the resources of the parties in terms of Rule 2 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

In these circumstances, the Tribunal set a further continued Case Management Discussion.

By e-mail to the Tribunal dated 28th August 2020, Mr Coyle confirmed that the Respondent was in fact now detained at HMP Addiewell. He also intimated an updated rent arrears statement disclosing total arrears of £4,525.00 with a full calculation of how that sum was calculated. He asked the Tribunal to amend both the amount sought and the Respondent's address in this application.

The Tribunal thereafter intimated the continued Case Management Discussion and papers to the Respondent both by e-mail to him, and by post to him at HMP Addiewell.

Continued Case Management Discussion

A continued Case Management Discussion was held at 10.00 on 13th October 2020 by Tele-Conference. The Applicants did not participate, but were again represented by Mr Coyle, solicitor. The Respondent did not participate, nor was he represented.

The Tribunal was again satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Tribunal allowed the amendment of both the Respondent's address and the sum sought in this application in terms of Rule 14A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, as Mr Coyle had requested in his e-mail of 28th August 2020.

The Tribunal was invited by Mr Coyle with reference to the application and papers to grant an order for payment of the sum of £4,525.00. Mr Coyle confirmed that the Respondent had quit the premises at the end of May 2020, and that the current rent arrears remained as of today's date at £4,525.00.

Statement of Reasons

The jurisdiction of the Tribunal in relation to Private Residential Tenancies, such as that which applied to the Property, is set by statute. Section 71(1) of the *Private Housing (Tenancies) (Scotland) Act 2016* provides:

"First-tier Tribunal's jurisdiction

- (1) In relation to civil proceedings arising from a private residential tenancy—
 - (a) the First-tier Tribunal has whatever competence and jurisdiction a sheriff would have but for paragraph (b),
 - (b) a sheriff does not have competence or jurisdiction.

- (2) For the purposes of subsection (1), civil proceedings are any proceedings other than—
- (a) the prosecution of a criminal offence,
 - (b) any proceedings related to such a prosecution.”

The Tribunal accordingly has jurisdiction to hear civil proceedings arising from a private residential tenancy such as between the parties in this application.

The Tribunal considered the terms of the tenancy agreement, the updated rent arrears statement provided, and the submissions made by Mr Coyle, and was satisfied that these disclosed an outstanding balance of rent arrears of the sum sought of £4,525.00, which sum remains outstanding. Rent of £425.00 per month was due in terms of the tenancy agreement. Accordingly, the Tribunal shall make an order for payment of that sum.

Decision

In these circumstances, the Tribunal will make an order for payment by the Respondent to the Applicants of the sum of £4,525.00.

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.

N Kinnear

Legal Member/Chair

13/10/2020
Date