



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/20/1105

Re: Property at Flat 2/2, 1 Ashburn Gate, Gourock, PA19 1NE (“the Property”)

Parties:

Ms Debbie Robertson, 36 Dunvegan Avenue, Gourock, PA19 1AE (“the Applicant”)

Ms Lynsay Robertson, Flat 2/2, 1 Ashburn Gate, Gourock, PA19 1NE (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for Payment in the sum of One Thousand Nine Hundred and Eighty Pounds Sterling (£1,980) be granted against the Respondent in favour of the Applicant

Introduction

This is an application under Rule 111 and Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016. The application is for a payment order which relates to rent arrears.

A Case Management Discussion (CMD) took place by teleconference on 25 August 2020 at 10.00 am.

The Applicant, Ms Debbie Robertson, was represented by of Mr Kenneth Caldwell of Patten and Prentice, solicitors. The Respondent, Ms Lynsay Robertson did not join the teleconference.

Service of the application, and notification of the CMD, was made upon the respondent by Sheriff Officer delivery on 5 August 2020. She is known to continue to occupy the Property and would have been aware of the CMD. There was no barrier to her participation. The CMD was listed at 10.00 am and commenced at 10.10 am.

Findings and Reasons

The Property is Flat 2/2, 1 Ashburn Gate, Gourrock, PA19 1NE.

The Applicant is the landlord of the property. The Respondent is the tenant of the property.

The written lease provided suggests that an attempt was made for the parties to enter into a short assured tenancy. This was not legally possible after 30 November 2017. Such tenancies no longer exist. Though neither of the parties were perhaps aware, the contract between them constitutes a private residential tenancy under the Private Housing (Tenancies) (Scotland) Act 2016.

The private residential tenancy commenced on 8 July 2019. No deposit was paid. The rent was stipulated at £495 per calendar month. The application by the Applicant seeks to recover arrears of rent. At the time the application was lodged the total sum sought was £1,980. This was comprised of four monthly payments of rent in the sum of £495. The last rent payment was made on 19 December 2019. At the time of application rent had not been paid for the months of January to April 2020.

An application for eviction is anticipated following a Notice to Leave being served upon the Respondent.

A rent statement has been produced which reflects the rent outstanding. Further arrears have accrued since the date of application. On 21 August 2020 the applicant's representative lodged an updated rent statement showing rent arrears in the sum of £3,960. The applicant has not lodged any application to increase the sum sought by way of amendment under Rule 14A. It is anticipated that a further application to recover the additional arrears will be made in due course. No adjournment to lodge a Rule 14A application to amend was proposed.

The Applicant is entitled to an Order for Payment in the sum of £1,980. She is entitled to recover rent legally due under the lease in operation. The Respondent has failed in her legal obligations to pay rent. The Tribunal attached weight to the documentary evidence, which was found to be credible and reliable, and the submissions of the Applicant's representative. None of this was challenged.

In the written application the applicant also seeks interest at the 'judicial rate' of 8%. This has no statutory effect for the Tribunal. 3% would compare to short-term

commercial loans which would be available on the market and would be a reasonable rate to be applied. The Applicant's agent indicated a willingness to accept interest at that rate. Fair notice of the Applicant's wish for interest on the principal sum has been provided to the Respondent.

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.

Richard Mill

25 August 2020

Legal Member/Chair

Date