



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/20/1169

Re: Property at 1/2 11 Mains Road, Beith, Ayrshire, KA15 2AR (“the Property”)

Parties:

Mrs Anne Nimmo, Pirnie Lodge Farm, Slamannan, Falkirk, FK1 3DJ (“the Applicant”)

Miss Charly Anne McDonald, formerly residing at 1/2 11 Mains Road, Beith, Ayrshire, KA15 2AR, and whose current whereabouts are unknown (“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 12th May 2020 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 Applicant sought in her application payment of arrears in rental payments of £766.39 in relation to the Property from the Respondent, and provided with her application copies of the private residential tenancy agreement, notice to leave with execution of service, rent schedule and other correspondence.

The tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*.

The Respondent could not be validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal, as when service was attempted by Sheriff Officers, they found the Property apparently empty.

Thereafter, service was validly effected by advertisement in terms of Rule 6A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, and the Tribunal was provided with the Certificate of Service by advertisement.

By e-mail to the Tribunal of 9th October 2020, the Applicant's representative sought to amend the sum sought to £2,065.57, and provided a rent arrears calculation and further information therewith.

A Case Management Discussion was held at 10.00 on 23rd October 2020 by Tele-Conference. The Applicant did not participate, but was represented by Mr Harris, solicitor. The Respondent did not participate, and was not represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

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 Harris explained that the Applicant did not know the date when the Respondent abandoned the Property. After being advised by the Tribunal that it had been unable to serve papers on the Respondent at the Property, the Applicant had investigated and resumed possession on 6th October 2020. The Respondent's current whereabouts are unknown.

Mr Harris noted that the Respondent has not claimed the tenancy deposit, and he was in the process of confirming with the Applicant as to whether the deposit was to be released to the landlord, and if so, whether all or some of that (depending on whether any of it required to be used to pay the cost of cleaning or repair) might be used to pay some of the outstanding rent.

Mr Harris explained that the rent arrears statement to 6th October 2020 in fact showed that arrears total £2,000.00 and not £2,065.57, and that he understood that the former was the correct figure.

Mr Harris asked the Tribunal to adjourn the Case Management Discussion for the purpose of allowing him to confirm the position with regard to repayment of the tenancy deposit, and thereafter for him to provide the Tribunal with a final updated rent arrears calculation taking account of any sum recovered from the deposit.

The Tribunal considered Mr Harris's submission to be reasonable 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.

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

The Tribunal considered that the Applicant had shown there is good reason why an adjournment was necessary, in order to allow her to clarify the sum sought in her application to reflect the rental arrears which are outstanding as at the date when the Respondent quit the Property.

It seemed only just that the Applicant be given an opportunity to do so, and the Tribunal accordingly exercised its discretion to adjourn the Case Management Discussion to a further date.

By e-mail to the Tribunal of 19th January 2021, the Applicant's representative advised that the sum sought in this application was £1,715.57, being the rent arrears to the date when the Applicant regained possession of the property under deduction of the tenancy deposit which had been paid to her, and provided a rent arrears calculation and further information therewith.

Continued Case Management Discussion

A continued Case Management Discussion was held at 10.00 on 29th January 2021 by Tele-Conference. The Applicant did not participate, but was again represented by Mr Harris, solicitor. The Respondent did not participate, and was not represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

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.

The Tribunal was invited by Mr Harris with reference to the application and papers to grant an order for payment of the sum of £1,715.57 with interest thereon in terms of Rule 41A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

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 private residential tenancy agreement, the updated rent arrears statement provided, and the submissions made by Mr Harris, and was satisfied that these disclosed an outstanding balance of rent arrears of the sum sought of £1,715.57, which sum remains outstanding. Rent of £250.00 per month was due in terms of Clause 8 of the tenancy agreement. Accordingly, the Tribunal shall make an order for payment of that sum.

The Applicant also seeks interest on that amount in terms of Rule 41A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

In terms of that rule, the Tribunal may include interest at the rate either stated in the tenancy agreement, or ordered by the Tribunal.

Mr Harris submitted that it is for the Tribunal to order what rate to apply.

In the absence of any guidance on this matter, it appears to the Tribunal to be just to award interest at a rate representing the investment or borrowing rate of lending banks for short term loans, which is currently approximately 3% per annum, and the Tribunal will accordingly do so. Mr Harris indicated that he was content with that approach.

Decision

In these circumstances, the Tribunal will make an order for payment by the Respondent to the Applicant of the sum of £1,715.57 with interest thereon at the rate of three per cent per annum from the date of the decision of the Tribunal until payment.

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.

Neil Kinnear
Legal Member/Chair

29th January 2021
Date