



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017.

Chamber Ref: FTS/HPC/CV/20/1580

Re: Property at 76D Shakespear Street, Dumfries, DG1 2JH (“the Property”)

Parties:

Mr Steven Athwall, Starvilla, 4 Annan Road, Dumfries (“the Applicant”)

Miss Yasmin Craig, 36 Goldie Crescent, Dumfries, DG2 0AG (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent(s) for payment of the undernoted sum to the Applicant(s):

Sum of TWO THOUSAND EIGHT HUNDRED AND TEN POUNDS (£2,810)

- Background
- 1. An application dated 12 July 2020 was submitted to the Tribunal under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking a payment order against the Respondent in relation to rent arrears accrued under a short assured tenancy agreement and damages costs.
- 2. Whilst the application was submitted to the Tribunal under Rule 70 of the Rules, it was clear that as the tenancy entered into was a Private Residential Tenancy Agreement, the application should in fact have been submitted under Rule 111 of the Rules, and accordingly the application has been determined under Rule 111.

3. The Application was lodged by Sandra Thom of Sandra Thom Properties, acting as managing agent for the Property and as the Applicant's Representative. The Landlord under Private Residential Tenancy Agreement is stated as being "The Executors of the Late Dilbagh Athwal." The Applicant is detailed in the application as being Steven Athwall.
4. By way of email correspondence, the Applicant's representative confirmed that there are four executors to the estate of the late Dilbagh Athwal, namely Mrs Sukhjinder Athwal, Miss Rita Athwal, Dr Nicholas Athwal and Mr Steven Athwal.
5. By letter of 6 October 2020 the Tribunal requested that the Applicant lodge documentary evidence of the appointment of the said four executors, such as Confirmation in their favour, together with written authority from the executors for Mrs Thom to act as their representative. The rafter, a Direction under Section 16 of Schedule 1 to the Rules and which was dated 2 November 2020 was issued to the Applicant by way of email on 3 November 2020. Said Direction required the Applicant to "*provide evidence that the Applicant is the Executor, or one of the Executors, of the late Dilbagh Singh Athwal, such as a copy of the grant of confirmation, copy of the will or copy of the court order appointing the Applicant as Executor.*" No such documentation was lodged. The Direction was not complied with.
6. A Case Management Discussion ("CMD") took place on 17 December 2020 by tele-conference. The Applicant's representative, Sandra Thom, was present. The Respondent was neither present nor represented.
7. The Tribunal sought clarification from the Applicant's representative as to why the Direction had not been complied with. The Applicant's Representative indicated that she thought she had complied by lodging the letter of authority from the executor. It was explained to the Applicant's Representative what was required by the Direction, and that matters could not proceed until this information had been provided. The Applicant's Representative confirmed that she would request this from the Applicant and lodge with the Tribunal. The CMD was adjourned to allow the Applicant one final opportunity to comply with the Tribunal's Direction of 2 November 2020.
8. A further Case Management Discussion took place on 9 February 2021. The Applicant was again represented by Sandra Thom of Sandra Thom Properties. The Respondent appeared personally.
9. The Applicant's representative moved for the order for payment to be granted as sought. The parties had entered into a Private Residential Tenancy Agreement. The Respondent had failed to make payment of rent and had fallen into arrears amounting to £450. Further, at the termination of the tenancy agreement, the property was left in an unacceptable state. Painting/decorating was required at a cost of £600, removal of rubbish at a cost of £330, replacement carpets throughout the property at a cost of £2300. After deduction of the security deposit, the sum outstanding was £2810.

10. The Respondent admitted the claim and put forward no defence to same. The Respondent agreed that the Order for Payment should be granted.

- Findings in Fact

11. The Tribunal made the following findings in fact:

- (a) The parties entered into a Private Residential Tenancy Agreement ("the Agreement") which commenced 1 September 2019;
- (b) In terms of Clause 7 of the Agreement, the Respondent was obliged to pay a monthly rent of £450 to the Applicant;
- (c) The Respondent had failed to make payment of rent as fell lawfully due, and had accrued arrears amounting to £450.
- (d) In terms of Clause 16 of the Agreement, the Respondent agreed to take reasonable care of the Property and in particular to ensure that the Property was kept clean;
- (e) In terms of Clause 24 of the Agreement, the Respondent agreed to replace or repair (or, at the option of the Landlord, to pay the reasonable cost of repairing or replacing) any contents or fittings which are destroyed or damaged during the tenancy;
- (f) The Respondent failed to take reasonable care of the Property and as a result the Landlord incurred a loss of £2360.

- Reasons for Decision

12. The Tribunal was satisfied that the Applicant was entitled to the sum as sought. By her own admission, the Respondent was in breach of Clauses 7, 16 and 24 of the Agreement. The Respondent admitted the claim.

- Decision

13. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent(s) for payment of the undernoted sum to the Applicant(s):

Sum of TWO THOUSAND EIGHT HUNDRED AND TEN POUNDS (£2,810)

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.

Fiona Watson

Legal Member/Chair

Date: 9 February 2021