



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/20/1584

Re: Property at 21 Cairngorm Crescent, Wishaw, ML2 7PS (“the Property”)

Parties:

Mr Kenneth Corcoran, 35 Drumnessie Court, Cumbernauld, G68 9HG (“the Applicant”)

Mr Thomas Campbell, whose current whereabouts are unknown, Ms Kerri Hendrickson, 21 Cairngorm Crescent, Wishaw, ML2 7PS (“the Respondents”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision (in absence of the Respondents)

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

Background

This is an application for a payment order dated 27th July 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 originally sought in his application payment of arrears in rental payments of £1,190.00 as at the date of the application in relation to the Property from the Respondents, and provided with his application copies of the private residential tenancy agreement and rent arrears statement.

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

the procedures set out in that Act appeared to have been correctly followed and applied.

The Respondents appeared to have been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 10th September 2020, and the Tribunal was provided with the executions of service.

A Case Management Discussion was held at 14.00 on 6th October 2020 by Tele-Conference. The Applicant did not participate, but was represented by Miss Morrison, solicitor. The First Respondent did not participate, nor was he represented. The First Respondent has not responded to this application at any stage either in writing or by any other form of communication. The Second Respondent, Kerri Hendrickson, participated, and was not represented.

The Second Respondent advised the Tribunal that the First Respondent vacated the Property around March 2020, and that she did not have a current address for him. The Tribunal was concerned that the First Respondent may not have been validly served in relation to this application, and continued the application for service by advertisement.

The Second Respondent accepted that there were rent arrears, but she was unsure as to what the correct amount of those arrears was.

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 Certificates of Service by advertisement.

The Applicant subsequently provided an updated rent arrears statement to 6th October 2020 disclosing the arrears of rent to that date were £1,108.02.

Continued Case Management Discussion

A continued Case Management Discussion was held at 14.00 on 10th December 2020 by Tele-Conference. The Applicant did not participate, but was again represented by Miss Morrison, solicitor. The Respondents did not participate, nor were they represented. The First 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 Miss Morrison with reference to the application and papers to grant an order for payment of the sum of £1,126.04. Miss Morrison explained that this was the current amount of rent arrears to today's date. Since 6th October 2020, two further monthly rent payments totalling £1,190.00 had become due, and the Applicant had received a further £1,071.98 in rent payments.

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 Miss Morrison, and was satisfied that these disclosed an outstanding balance of rent arrears of the sum now sought of £1,126.04, which sum remains outstanding. Rent of £595.00 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.

Decision

In these circumstances, the Tribunal will make an order for payment by the Respondents jointly and severally to the Applicant of the sum of £1,126.04.

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

10/11/2020

Legal Member/Chair

Date