



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/20/2161

Re: Property at 6 Perceval Rd, Inverness, IV3 5QE (“the Property”)

Parties:

Miss Emma Craig, 146 Glanderston Dr, Knightswood, Glasgow, G13 3UQ (“the Applicant”)

Ms Catriona Grant, 18a Kings St, Nairn, IV12 4PD (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order be made against the Respondent, for payment to the Applicant, in the Sum of One Thousand Two Hundred Pounds Sterling (£1,200)

Introduction

This is an application under Rule 111 and section 71 of the Private Housing (Tenancies) (Scotland) Act 2016.

The application, which was received on 13 October 2020, seeks recovery of unpaid rent.

A first Case Management Discussion (CMD) took place by teleconference on 2 December 2020. At that time it was accepted on behalf of the respondent that arrears of rent were due, but there was a dispute about how such arrears should be repaid. Matters were adjourned to enable the parties to discuss matters between themselves in the hope that agreement could be reached.

The fresh CMD took place on 19 January 2021 at 2.00 pm. The applicant participated in the hearing personally and represented her own interests. The respondent did not join the hearing. She was represented by Ms Kathleen Cousins of Nairn Citizens Advice Bureau.

Findings and Reasons

The property is 6 Perceval Road, Inverness IV3 5QE.

The applicant is Ms Emma Craig who is the former landlord. The respondent is Ms Catriona Grant who is the former tenant.

The parties entered into a tenancy agreement which commenced on 7 February 2019. The applicant attempted wrongly to set up a short assured tenancy, which was no longer legally possible. Such tenancies no longer exist in Scotland. As such, the tenancy agreement entered into between the parties is a private residential tenancy as defined within Section 1 of the Private Housing (Tenancies) (Scotland) Act 2016.

The rent agreed between the parties was £565 per month. A deposit of £600 was paid.

Due to financial difficulties encountered by the respondent, as a consequence of the Covid-19 pandemic, she was unable to meet the contractual monthly payments of rent. For the months of April to July 2020 inclusive she paid £200 per month. This was a shortfall of £365 for each of the four months. The rent arrears due under the lease amounted to £1,460 which is the sum sought in the application to the Tribunal.

The respondent has now vacated the property. The applicant chose not to seek to recover any rent arrears from the deposit which was held with Safe Deposits Scotland. This was fully refunded to the respondent.

The respondent has complained that the relevant information which ought to have been provided to her, in terms of Regulation 3 of the Private Residential Tenancies (Information for Tenants) (Scotland) Regulations 2017 had not been adhered to due to the applicant's erroneous attempt to set up a short assured tenancy. She felt that she had been misled and that some regard ought to have been had to this in calculating the sums to be repaid to the applicant.

The respondent did, at the time that she was in occupation of the property, have the right to raise Tribunal proceedings in respect of the applicant's failure to provide the necessary information. She did not do so.

The applicant is entitled to recover arrears of rent lawfully due under the lease. The respondent was obliged to pay the sum of £565 per month for occupation of the property.

There was, in fact, no dispute between the parties that the respondent is due the sum of £1,460 in unpaid rent.

Discussions between the parties had not resolved the dispute completely. The applicant had been prepared to reduce the total sum sought but that had earlier been in tandem with the possibility that the respondent would make payment of the sum due in reasonably early course.

The respondent has the right to make a time to pay application. However her current financial circumstances do not allow her to make an offer which would clear the sums due over a reasonable period of time. The most she could offer to pay would be in the region of £20 per month. This would take around 6 years to clear the debt. In the circumstances the respondent's representative indicated candidly that no time to pay application was proposed as any offer to pay by instalments would not be reasonable.

The applicant indicated orally to the Tribunal that she was prepared to reduce the amount she was seeking to £1,200. This was to reflect the respondent's personal circumstances and acknowledging her own failures at the time that the lease was entered into. This seemed objectively reasonable.

The hearing was adjourned for a period to afford the respondent's representative the opportunity of taking instructions from the respondent. On returning the respondent's representative indicated that a payment order in the sum of £1,200 was not opposed.

By consent, the Tribunal made a payment order against the respondent in the sum of £1,200. The Tribunal relied upon the documentary evidence and the submissions made by both parties.

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

19 January 2021

Legal Member/Chair

Date