

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 (1) of the Private Housing (Tenancies)(Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/20/2349

Re: Property at 30a Rugby Road, Kilmarnock, KA1 2DP (“the Property”)

Parties:

Mr Stuart Miller, 39 Rugby Road, Kilmarnock, KA1 2DQ (“the Applicant”)

Miss Terri McClung, 30a Rugby Road, Kilmarnock, KA1 2DP (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the Respondent in the sum of £3793.17.

Background

1. By application dated 3 November 2020 the Applicant applied to the Tribunal for an order for payment by the Respondent in respect of alleged rent arrears arising from the Respondent’s tenancy of the property. The Applicant submitted a copy of a rent statement together with the tenancy agreement in support of the application.
2. By Notice of Acceptance dated 3 December 2020 a legal member with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.
3. A CMD was held by teleconference on 14 January 2021. At that time the CMD was continued to 19 February 2021 to allow the Applicant to provide further information as to the nature of the tenancy in place and to allow intimation of the increased sum claimed to be made to the Respondent.
4. A further CMD was held on 19 February at which the Applicant confirmed that the tenancy was in fact a Private Residential Tenancy and the application was

amended accordingly. The Applicant also sought to increase the sum claimed to £3793.17. As it appeared that intimation of the amendment and the invitation to the Respondent to attend the CMD that had been sent by the Tribunal administration by recorded delivery post had been returned undelivered the CMD was further adjourned.

5. Intimation of the adjourned CMD together with the CMD Notes of 14 January and 19 February 2021 and written representations from the Applicant were served on the Respondent by Sheriff Officers on 3 March 2021.
6. By email dated 9 March 2021 the Applicant submitted an updated rent statement to the Tribunal and confirmed that a copy had been sent to the Respondent by recorded delivery post.

The Case Management Discussion

7. A CMD was held by teleconference on 26 March 2021. The Applicant attended personally. The Respondent did not attend and was not represented. The Tribunal being satisfied that proper intimation of the CMD had been given to the Respondent determined to proceed in her absence.
8. The Applicant confirmed that he wished to claim the increased amount of £4219.18 as detailed on the rent statement submitted by him on 9 March. The Tribunal referred the Applicant to the terms of Rule 14 A of the First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Rules") and pointed out that the email of 9 March did not comply with that rule in that it did not seek to amend the sum claimed it simply attached the updated rent statement. The Tribunal queried what further correspondence had been sent to the Respondent along with the rent statement on 8 March. The Applicant advised the Tribunal that he did not know as it had been sent by his letting agent. The Tribunal determined that as there was not a request for an amendment in proper form it was unable to accede to the Applicant's request at this stage.
9. There then followed some discussion as to further procedure. The Tribunal noted that the Applicant was, through his solicitor, in the process in the process of making an application to the Tribunal for the eviction of the Respondent from the property. He explained there had been complaints about anti-social behaviour on the part of the Respondent and that the police had carried out a drugs raid at the property. He explained that he did not yet have a date for a CMD in the eviction application. He confirmed that it was likely that further rent payments would become due in advance of any such CMD.
10. The Tribunal noted that the rent statement and papers showing the amended sum claimed of £3793.17 had been properly served on the Respondent and indicated that an order for payment in that amount could be granted by the Tribunal. The Tribunal indicated if the Applicant wished to seek any further amount then it would either be necessary to continue the CMD once again or

the Applicant would have to make a fresh application. The Applicant asked the Tribunal to grant the application in the sum of £3793.17.

Findings in Fact

11. Notwithstanding the terms of the Tenancy agreement entered into between the parties there is a Private Rented Tenancy in place at a monthly rent of £425.00.
12. As at 1 February 2021 rent amounting to £3793.17 was due by the Respondent to the Applicant.

Reasons for Decision

13. The Tribunal was not satisfied that the Applicant had properly sought to amend the sum claimed to £4219.18 in terms of Rule 14A of the 2017 Rules and refused the Applicant's request in this regard.
14. The Tribunal was satisfied it had sufficient information before it to make a decision. The Tribunal was satisfied from the Applicant's oral submissions and the rent statement provided that the rent due by the Respondent to the Applicant as at 1 February 2021 amounted to £3793.17 and accordingly was prepared to grant an order for payment in that amount.

Decision

15. The Tribunal finds the Applicant entitled to an order for payment by the Respondent in the sum of £3793.17.

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.

**Graham Harding
Legal Member/Chair**

**26 March 2021
Date**