



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/21/0085

Re: Property at 21 Gorely Place, Motherwell, ML1 2FJ (“the Property”)

Parties:

Clyde Valley Property Services, 50 Scott Street, Motherwell, ML1 1PN (“the Applicant”)

Mr John McPhee, 21 Gorely Place, Motherwell, ML1 2UJ (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member)

Decision (in absence of the Respondent)

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

A payment order in the sum of £5477.03 be made in favour of the applicant and against the Respondent.

Background

1. This is an application for a payment order in terms of Rule 111 of the Tribunal rules of procedure first lodged with the Tribunal on 13 January 2021 and accepted by the Tribunal on 30 March 2021. A Case Management Discussion was fixed for 12 May 2021 at 2pm.

The Case Management Discussion

2. At the case management discussion on 12 May 2021 the Applicant was represented by Miss Carol Sanderson and Mr Mike Campbell. Mr Campbell’s attendance related to matters first raised by the Tribunal prior to the case management discussion in

relation to the issue of who the landlord is and whether the first-tier Tribunal had jurisdiction over the application.

3. There was no appearance by or on behalf of the Respondent at the case management discussion. The Tribunal had sight of an execution of service of the application and papers by sheriff officer by placing these through the letterbox of the property on 13 April 2021. Miss Sanderson was also able to confirm to the Tribunal that she had met the Applicant at the property on 23 April 2021 and he was living there at that time. She requested the Tribunal proceed in his absence and the Tribunal agreed to proceed in the absence of the Respondent as it was satisfied that the Tribunal rules of procedure in relation to reasonable notice of the proceedings had been complied with.

4. The Tribunal had sight of the application, the tenancy agreement, a number of emails between the Applicant and the Respondent, a rent statement, a board report, and a property statement.

Jurisdiction

5. Mr Campbell and Miss Sanderson advised the Tribunal that the landlord in terms of the tenancy agreement is Clyde Valley Property Services and when rent was paid by the Respondent he paid rent to that entity. It was explained and set out in representations to the Tribunal that Clyde Valley Property Services are part of the Clyde Valley Group and own a number of properties outright for market rent and are the registered landlord of these homes. Clyde Valley Housing Association, also part of the Clyde Valley Group, is a social landlord which also owns a number of properties for midmarket rent. These midmarket rent properties owned by Clyde Valley Housing Association are leased to Clyde Valley Property Services. It was on this basis that Clyde Valley Property Services were noted as the landlord in the tenancy agreement with the Respondent. The Tribunal had sight of a board report from November 2016 which sought approval for a number of properties owned by Clyde Valley Housing Association to be leased to the separate entity Clyde Valley Property Services who could then rent out these private midmarket rent properties. This approval was given and the leasing arrangement which the Tribunal was advised was often used by Housing Associations went ahead. This is what had occurred in relation to the property under consideration in this application.

6. Where confusion had arisen was that in terms of the landlord register Clyde Valley Housing Association appeared in error as the registered landlord for this property at 21 Gorely Place, Motherwell ML1 2UJ. Clyde Valley Property Services is a registered landlord but the Tribunal was advised that due to human error the particular property which was under consideration in this application had not been added to the correct landlord portfolio at the time of registration. This property had never in fact been within the landlord portfolio of Clyde Valley Housing Association. Miss Sanderson advised the Tribunal that this had been an error in terms of registering the property details as part of the Applicant's property portfolio and would be rectified as soon as possible. Having heard the Applicant's position regarding the separate entities and the leasing arrangement the Tribunal was satisfied that the Applicant is a separate legal entity from Clyde Valley Housing Association and can enter into a private residential tenancy in terms of the 2016 Act, not being a social landlord and therefore the agreement between the parties appears to be a private residential tenancy.

7. Miss Sanderson advised the Tribunal that parties had entered into a private residential tenancy agreement with effect from 24 October 2018 and the agreement was ongoing. The monthly rent is £475 per calendar month payable in advance. A statement of rent arrears had been lodged with the Tribunal up to and including rent charges for January 2021. Miss Sanderson outlined various attempts that the Applicant had made to engage the Respondent in relation to rent arrears. No rent had been paid for many months as at the case management discussion. The Respondent had been working when he took on the tenancy and it was thought he had been employed up until January 2020 when he had lost his job and had had a number of other difficulties in his life. He had repeatedly been signposted to apply for universal credit payments. Ultimately Miss Sanderson contacted the DWP and applied for managed payments towards the rent of which two were made before these stopped. Miss Sanderson's most recent information is that the Respondent is working and he had told her that he was working 'down south' and wants to stay at the property. Miss Sanderson indicated to the Tribunal there was no reason to think that the substantial rent arrears had built up as a result of a delay or failure in payment of any form of benefit.

8. The Applicant had lodged updated rent statements which showed that the sum of £7377.03 was now due in respect of rent arrears. The amended sum in rent arrears had not been intimated to the Respondent and Miss Sanderson indicated to the Tribunal that she was proceeding on the basis of the sum in the original application and the sum being requested was £5477.03.

9. Having considered all the representations, information, and documentation which it had received the Tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair,

10. The Tribunal determined that it was appropriate to grant a payment order in the sum of £5477.03.

Findings in Fact

11. The Applicant Clyde Valley Property Services is a company which is part of the Clyde Valley Group and owns a number of properties which are rented out and they are the registered landlord of these properties.

12. Clyde Valley Housing Association a registered social landlord is a separate entity which also part of the Clyde Valley Group and a owns a number of properties for midmarket rent and leases these to the Applicant which then deals with the letting of these properties and acts as landlord.

13. The landlord register for the property referred to in this application shows Clyde Valley Housing Association as the registered landlord.

14. Clyde Valley Property Services are registered as landlords on the local authority landlord register but not as the landlords for the property in this application due to an error.

15. The property referred to in this application has always been fully managed and leased by Clyde Valley Property Services as a private property since it was completed in 2016.

16. Clyde Valley Property Services are not registered social landlords and as such are able to enter into a private residential tenancy agreement.

17. The tenancy agreement in this application is a Private Residential tenancy within the meaning in the 2016 Act and as such the Tribunal has jurisdiction over this application.

18. The Applicant and Respondent entered into a private residential tenancy agreement at the property with effect from 24 October 2018.

19. The tenancy agreement is ongoing and in terms of the agreement the monthly rent payable in advance is £475.

20. Substantial rent arrears have built up at the property which are not as a result of any delay or failure in the payment of any benefit.

21. A number of unsuccessful attempts were made on behalf of the Applicant to engage with the Respondent in relation to the rent arrears but these have been unsuccessful.

22. Arrears of rent to the property in the sum of £5477.03 are lawfully due by the Respondent to the Applicant.

Reasons for Decision

23. The Tribunal was essentially dealing with two issues in this application, the first being the matter of jurisdiction and the second being the merits of the application. The jurisdictional issue appeared to have arisen because of an error in the registration details as to the landlord of the property. On the information that the Tribunal was given it was clear that the landlord in relation to the property and the application was entitled to grant a private residential tenancy and that an error had simply taken place in registering this property as part of the portfolio belonging to the social landlord Clyde Valley Housing Association when it should have been registered as part of the landlord portfolio for the Applicant. During the Tribunal Miss Sanderson for the Applicants undertook that she would have this error rectified as soon as possible. In any event the Tribunal was satisfied that whilst the two organisations appear to come under the umbrella of the Clyde Valley Group these are separate legal entities and that Clyde Valley Property Services is entitled to grant a private residential tenancy at the property it not being a registered social landlord.

In the light of the information given to the Tribunal about the accrual of rent arrears and the attempts to engage with the Respondent to try to deal with these the Tribunal was satisfied it was reasonable to grant a payment order for the rent arrears.

Decision

The Tribunal granted a payment order in the sum of £5477.03 in favour of the Applicant and against the Respondent.

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.

Valerie Bremner

Legal Member/Chair

12.5.21

Date