



**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/21/0917**

**Re: Property at 3F Bute Avenue, Renfrew, Renfrewshire, PA4 0DR (“the Property”)**

**Parties:**

**Mrs Laura Galloway, 64 Luss Brae, Hamilton, ML3 9UT (“the Applicant”)**

**Mr Christopher Bell, Ms Hayley Marshall, whose current whereabouts are unknown; 3F Bute Avenue, Renfrew, Renfrewshire, PA4 0DR (“the Respondents”)**

**Tribunal Members:**

**Neil Kinnear (Legal Member)**

**Decision (in absence of the Second Respondent)**

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

**Background**

This was an application for a payment order dated 15<sup>th</sup> April 2021 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 sought in her application payment of arrears in rental payments of £2,145.00 in relation to the Property from the Respondents along with any further sums due from the date of the application to the date an order was to be made, together with interest thereon in terms of clause 8 of the tenancy agreement of 8%, and provided with her 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 Applicant subsequently on 18<sup>th</sup> May 2021 provided an updated rent arrears statement showing arrears at that date of £2,670.00.

The Respondents had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 7<sup>th</sup> May 2021, and the Tribunal was provided with the executions of service.

A Case Management Discussion was held at 11.30 on 4<sup>th</sup> June 2021 by Tele-Conference. The Applicant did not participate, but was represented by Miss Caldwell, paralegal. Neither of the Respondents participated. The First Respondent's mother, Mrs Patricia Bell, participated, and asked to represent her son.

Mrs Bell advised that her son did not reside with her at her address of 9 Parkvale Drive, Erskine, at which address sheriff officers served the papers on Mr Bell by leaving them with her. She was in telephone communication with her son, but could not provide his current address.

Mrs Bell stated that her son had split up with the Second Respondent shortly after a motor accident, the mental effects of which he still suffers from. She confirmed that he did not, however, suffer any mental difficulty which would require him to receive assistance in representing his position, and that he was happy for his mother to represent him.

Mrs Bell advised that her son had never resided at the Property. She had not seen a signed copy of the lease, and wished to do so in order to confirm if her son had signed the lease or not.

The Tribunal noted that the Applicant has provided an unsigned file copy of the lease agreement. Standing Mrs Bell's assertions, it might be important to see the original signed version, and Miss Caldwell indicated that she would obtain and lodge that with the Tribunal.

The Tribunal advised Mrs Bell that if she was to represent her son in this application, her son would require to provide to the Tribunal an authorisation confirming in writing that he wished his mother to represent him in these proceedings, which should be signed and dated by him. Mrs Bell stated that her son would do that.

However, standing what Mrs Bell indicated, the Tribunal considered that it was in the interests of justice to continue the Case Management Discussion to allow the Applicant to produce the signed lease agreement, and for the First Respondent to provide written authorisation for his mother to represent him.

Miss Caldwell also confirmed that she would seek service by advertisement upon the First Respondent, standing Mrs Bell's statement that her son did not live at the address where service was previously executed.

Thereafter, service was validly effected by advertisement upon the First Respondent 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 Certificate of Service by advertisement.

The First Respondent sent a letter to the Tribunal, received on 1<sup>st</sup> July 2021, in which he advised that he wished his mother, Mrs Patricia Bell, to represent him in this application.

The Applicant subsequently on 1<sup>st</sup> July 2021 provided an updated rent arrears statement showing arrears as at the date of the continued Case Management Discussion on 5<sup>th</sup> July 2021 would be £3,195.00.

The Applicant also produced the signed lease agreement, which bore the signatures of both Respondents as tenants.

### **The Continued Case Management Discussion**

A continued Case Management Discussion was held at 10.00 on 5<sup>th</sup> July 2021 by Tele-Conference. The Applicant did not participate, but was represented by Miss Caldwell, paralegal. Neither of the Respondents participated. The First Respondent was represented by his mother, Mrs Patricia Bell.

The Tribunal was satisfied that the requirements of giving notice with regard to the Second Respondent 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 Caldwell with reference to the application and papers to grant an order for payment of the sum of £3,195.00 with interest at the rate of 8% per year from the date on which the rent is due until payment, in terms of clause 8 of the tenancy agreement. Miss Caldwell explained that this was the current amount of rent arrears to today's date.

Mrs Bell expressed her frustration at the situation her son found himself in, and noted how unfair it was that he was liable for rent arrears in relation to a property which he had never lived in. However, she did not dispute that her son had signed the lease agreement as tenant, nor that in terms of the agreement he was jointly and severally liable for rent arrears, the level of which she did not contest.

### **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 Caldwell, and was satisfied that these disclosed an outstanding balance of rent arrears of the sum now sought of £3,195.00, which sum remains outstanding. Rent of £525.00 per month was due with interest at the rate of 8% per year from the date on which the rent was due until payment in terms of Clause 8 of the tenancy agreement. Accordingly, the Tribunal shall make an order for payment of that sum with interest.

### **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 £3,195.00 with interest thereon at the rate of eight per cent per year from the date of the decision of the Tribunal until payment.

### **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**

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**Legal Member/Chair**

**5 July 2021**

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**Date**