



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/22/1246

Re: Property at 1-1 11 Findhorn Street, Glasgow, G33 2EF (“the Property”)

Parties:

Mr Mark Reynolds, 4 Dunsyre Street, Glasgow, G33 2PA (“the Applicant”)

Miss Elizabeth McKechnie, 1-1 11 Findhorn Street, Glasgow, G33 2EF (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatrige (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order for the amount of £ £2,038.59 by the Respondent to the Applicant should be granted.

A: Background

1. The case history is contained in the Case Management Discussion (CMD) notes of 22.11. 22 and 27.1.23, which are referred to for its terms and held to be incorporated herein.
2. In addition to the documents listed therein the following further documents were lodged by the parties in advance of the hearing on 30.3.23:
 - a) email 6.2.23 from Applicant with statement of previous rent arrears in 2020.
 - b) email from Respondent 6.2.23 with photographs showing 3 pages of a document, which was illegible due to the file size.
 - c) email from Applicant 10.2.23 confirming that the rental charge for the property had been £550 from the start of the tenancy.
 - d) email from Respondent 14.2.23 stating there was never a second lease.

B: The Hearing

1. The Hearing took place on 30.3.2023. Ms Brennan from 1-2 Letting and Sales Ltd, representing the Applicant, had confirmed previously that Mr Reynolds would not be attending.
2. The hearing was supposed to be by Webex but due to problems of the Respondent connecting into the hearing it was changed to a voice only teleconference hearing. The Respondent and Ms Brennan attended. The hearing was arranged for the conjoined applications for a payment order and an eviction order lodged by the Applicant and the evidence was heard in a conjoined hearing for both cases.

3. Preliminary Matters:

- a) The legal member explained the purpose and format of the hearing.
- b) The amount sought in the payment action was reduced by Ms Brennan to £2,038.59, as further payments had been made towards the arrears via direct Housing Benefit (HB) payments to the landlord. These had followed the pattern previously shown in the most recent arrears schedule. The amount was not disputed by the Respondent. The Tribunal allowed the amendment to the up to date amount.
- c) The Respondent was asked what the content of the medical evidence was she had sent on 6.2.23. When she read through the pages she stated it was actually not what she had asked her GP for and did not deal with her problems in the run up to the last hearing, which the documents were supposed to address to show she had genuinely been unable to prepare for the hearing on 27.1.23. As the document did not show the relevant information she did not read it out further.

4. McKechnie's evidence:

- a) The Respondent stated that she is no longer disputing the payment action. She agreed that she owes the rent as stated and that there were also additional arrears of the amount shown in the Applicant's document from 2020. The arrears initially had arisen because of the problems during Covid and whenever she had to make a decision where to allocate the available funds she allocated them to feeding her son, even if that meant not paying the full rent. She stated she will pay the arrears.
- b) Whilst on the one hand she did not dispute the arrears, she also stated there were outstanding repairs but was not prepared to give any detailed evidence about this.
- c) She agreed that the landlord over a long time had been very patient with her developing rent arrears and that he had repeatedly asked her to address payment options as shown in the text messages.

5. Ms Brennan's evidence:

- d) On behalf of the Applicant Ms Brennan stated that over the total period of the tenancy there had been about £6,000 arrears. The landlord was now himself in a precarious financial situation and was intending to sell his rental properties, he also has medical problems as shown in the certificate lodged.
- e) She also stated that if an eviction order was granted the Applicant may not insist on enforcing the civil payment order if granted as his main aim at this stage was to be able to conclude this process and get the property back.

C: Findings in Fact:

Based on the evidence lodged and the representations of the participants at the CMD and the hearing the Tribunal makes the following findings in fact:

1. The tenancy is a Private Residential Tenancy over the property which started on 28.1.2018.
2. The parties were the landlords and tenant of said Tenancy Agreement.
3. The tenancy is ongoing.
4. Payments since the takeover of the management of the property 1-2 Lets are as shown in the rent statements.
5. Further arrears had accumulated in 2020 as shown in the rent statement but were not pursued as part of this application.
6. The Respondent had not offered a payment plan.
7. No time to pay direction application has been made.
8. The monthly rent is and has been £550 per month since the start of the tenancy.
9. Between 4.10.21 and 30.3.23 rent arrears of £2,038.59 accrued and remain outstanding.

D: Reasons for decision

1. The Tribunal makes its findings on the civil standard of proof, which is the balance of probability. The Tribunal carefully considered the documentary evidence and the oral evidence given by all participants throughout the CMDs and the hearing.
2. It was not disputed that the parties entered into the Private Residential Tenancy (PRT) which was evidenced by the information from both parties about the start date of the tenancy and the rent due per calendar month under the agreement. Only an unsigned PRT document was lodged. The Applicant had advised that the original signed lease was with the Respondent, who had borrowed it. The Respondent stated there was only one signed lease and she had not borrowed it. However, both parties agreed throughout the proceedings that the PRT in place was the model tenancy agreement Mr Reynolds had downloaded from the internet with no adjustments of the clauses and that the rent had been £550 per month. The Tribunal is thus satisfied that the Respondent had entered into a Private Residential Tenancy Agreement with the Applicant for the property on those terms.
3. The Respondent challenged the amount of rent due at the start of the proceedings but despite repeated directions from the Tribunal to quantify the amount disputed and to provide evidence of why the rent was disputed the Respondent did not provide any such evidence and at the hearing on 30.3.23 stated she was no longer disputing the rent was due.
4. At no point had the Respondent disputed the accuracy of the payment history as set out in the arrears statements. Based on the information

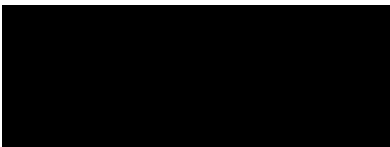
available the Tribunal was thus satisfied that the arrears accrued during the management period of 1-2 Lettings and Sales Ltd as stated in the rent statements and updated by Ms Brennan at the hearing and that thus rent of £2,038.59 was outstanding and due to be paid by the Respondent to the Applicant. The Tribunal notes that the Applicant was not pursuing rent arrears from an earlier period and had limited the application to the arrears as stated above.

E: Decision:

The Tribunal grants the order for payment of the amount of £2,038.59 by the Respondent to the Applicant. The decision was unanimous.

F: 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.



Petra Hennig McFatridge

Legal Member/Chair

30 March 2023

Date