

Housing and Property Chamber

First-tier Tribunal for Scotland



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/21/0439

Re: Property at 19b High Street, Johnstone, PA5 8JU (“the Property”)

Parties:

**Mr Allan Henderson. Ochanbar, Tandlehill Road, Kilbarchan, PA10 2DD (“the Applicant”), and
Penny Lane Homes in Johnstone, 36 High Street, Johnstone, PA5 8AH (“the Applicant’s Representative”) and**

Mr Martin McPhee, 19b High Street, Johnstone, PA5 8JU (“the Respondent”)

Tribunal Member:

G McWilliams- Legal Member

Decision in absence of the Respondent

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

Background

1. This is an Application for a payment order, contained within papers lodged with the Tribunal on 24th February 2021, 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 Rules of Procedure (“the 2017 Rules”).

2. In the Application, the Applicant initially sought payment of arrears in rental payments of £1950.00 in relation to the Property, from the Respondent, and provided copies of the parties Private Residential Tenancy Agreement (“PRT”) and a Rent Arrears Statement.
3. The PRT had been correctly and validly prepared in terms of the provisions of The Private Housing (Tenancies) Act 2016 and the procedures set out in that Act had been correctly followed and applied.
4. The Respondent had been validly served by Advertisement of the Notification, Application papers and Guidance Notes from the Tribunal on the Tribunal’s website between 30th April 2021 and 3rd June 2021, after Sheriff Officers were unable to gain access to the Property, on 25th and 26th March 2021, to serve papers on the Respondent. The Tribunal was provided with the Certificate of Service by Advertisement.
5. The Applicant, through his Representative, subsequently amended his Application to seek an order for payment of updated rent arrears, totalling £3000.00, from the Respondent. The Representative submitted an updated Rent Arrears Statement on 17th May 2021.

Case Management Discussion

6. A Case Management Discussion (“CMD”) proceeded remotely by telephone conference call at 2pm today, 3rd June 2021. The Applicant’s Representative’s Ms K Deans attended. The Respondent did not attend and was not represented. Ms Deans stated that the outstanding rent now due is in the sum of £3000.00. Ms Deans submitted that as the Respondent had been effectively served with all papers in respect of the Application for an order for payment, and had not lodged any representations with the Tribunal, nor attended at the CMD, the payment order sought in the amended Application, in the sum of £3000.00, should be granted. Ms Deans also stated that the Applicant had also lodged an Application for an eviction order with the Tribunal, and may submit another Application for a further order for payment in respect of any additional arrears of rent which may become due.

Statement of Reasons for Decision

7. Section 71 of The Private Housing (Tenancies) Act 2016 provides as follows:

- (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.

8. Accordingly, the Tribunal has jurisdiction in relation to claims by landlords (such as the Applicant) for payment of unpaid rent against a tenant (such as the Respondent) in respect of a PRT such as this.

9. The Respondent had been validly served with all of the Application papers, and notified of the CMD, but had not lodged representations with the Tribunal, or attended the CMD to provide evidence, and/or make any submission, opposing the order sought. The Tribunal considered the terms of the PRT and the copy Rent Arrears Statements provided, as well as the submission made by the Representative's Ms Deans, and was satisfied that there is an outstanding balance of rent arrears of £3000.00 presently due and that it is reasonable to grant an order for payment by the Respondent to the Applicant in that amount.

Decision

10. Accordingly, the Tribunal made an order for payment by the Respondent to the Applicant of the sum of £3000.00.

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.

Gerald McWilliams

3rd June 2021

Legal Member

Date

