



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/22/0420

Re: Property at 5 Enterkine, Killwinning, Ayrshire, KA13 6LW (“the Property”)

Parties:

Mrs Christine Dwyer, 4 Eskdale Road, Onchan, Isle Of Man (“the Applicant”)

Mr Colin Mcleod, Miss Joanna McCombe, 45 Innerwood Road, Kilwinning, North Ayrshire, KA13 7DX (“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 second named Respondent Miss Joanna McCombe in the sum of £2112.88 the application against the first named Respondent Mr Colin McLeod having been withdrawn.

Background

1. By application dated 5 February 2022 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 rent statement and tenancy agreement in support of the application.
2. Following correspondence between the Tribunal administration and the Applicant between February 2022 and April 2022, by Notice of Acceptance dated 19 April 2022 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was sent to the Applicant on 20 April 2022 and was served on the Respondent by Sheriff Officers on 17 May 2022.
4. By email dated 10 June 2022 the second named Respondent advised the Tribunal that the first named Respondent had taken his own life on 4 June 2022.

The Case Management Discussion

5. A CMD was held by teleconference on 28 June 2022. The Applicant attended in person. 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 their absence.
6. The Tribunal queried if the Applicant had any further knowledge with regards to the first named Respondent's death. The Applicant explained she had received telephone calls from the second named Respondent that she had not answered and also text messages that she had not opened. She went on to say that having opened a text message from the second named Respondent that had confirmed that Mr MacLeod was apparently dead.
7. The Tribunal explained to the Applicant that it could not grant an order against a dead person and therefore if the Applicant was satisfied that Mr Macleod was deceased then the option was either to withdraw the application insofar as it was directed against him or to delay the proceedings until an executor was appointed to Mr Macleod's estate. The Applicant thought it would be dreadful if the second named Respondent was not telling the truth and was of the view that Mr MacLeod must have died and that it was unlikely that he would have an executor appointed. In the circumstances she said she wished to proceed with the application against the second named Respondent alone.
8. The Applicant referred the Tribunal to the rent statement submitted and to the adjudication by Safe Deposits Scotland awarding the deposit of £460.00 to the Landlord. The applicant explained that although the Respondent had caused a lot of damage to the property the letting agents had advised that the deposit should be used to recover some of the rent arrears. Accordingly, after deduction of the deposit that had been paid the balance of the rent now due amounted to £2112.88 and the Applicant reduced the sum claimed to that amount.

Findings in Fact

9. The property is owned by Tyrone John Dwyer but with his authority the Applicant is the Landlord and entered into a Private Residential tenancy Agreement with the Respondent that commenced on 4 April 2019 at a rent of £460.00 per calendar month.
10. The Respondent paid a deposit of £460.00 at the commencement of the tenancy that was lodged with Safe Deposits Scotland.

11. As at the termination of the tenancy on 11 November 2021 the Respondent owed the Applicant rent in the sum of £2572.88.
12. Following an adjudication by Safe Deposits Scotland the Respondent's deposit of £460.00 was awarded to the applicant in respect of outstanding rent.
13. After deduction of the deposit the rent due by the Respondent to the Applicant amounted to £2112.88.
14. By email dated 10 June 2022 the second named Respondent advised the Tribunal that the first named Respondent had taken his own life on 4 June 2022.
15. The Applicant has withdrawn her application insofar as it is directed against the first named Respondent.

Reasons for Decision

16. The Tribunal was satisfied from the documentary evidence produced and the oral submissions of the Applicant that the parties had entered into a Private Residential tenancy Agreement that commenced on 4 April 2019 at a rent of £460.00 per calendar month.
17. The Tribunal was also satisfied from the terms of the rent statement and from the oral submissions of the Applicant and the other documents that after payment of the deposit to the applicant the balance of rent due by the Respondent to the Applicant amounted to £2112.88.
18. Although the second named Respondent had not submitted a copy of the first named Respondent's death certificate the Applicant thought that it was likely that the first named Respondent had died and that it was unlikely that an executor would be appointed and therefore in the circumstances, she wished to withdraw the application insofar as it was directed against the first named Applicant. That being the case and as the first and second named Respondents were in any event jointly and severally liable for any debt due to the Applicant arising from the tenancy of the property the Tribunal was satisfied that the application could proceed against the second named Respondent alone. The Tribunal was also satisfied that no further enquiries were necessary and that it had sufficient information before it to make a decision without the need for a hearing. The second named Respondent was aware of the proceedings and had determined not to attend or be represented or submit any written representations in opposition to the order being granted. The Tribunal was therefore satisfied that the Applicant was entitled to an order for payment by the second named Respondent in the sum of £2112.88.

Decision

19. The Tribunal finds the Applicant entitled to an order for payment by the second named Respondent, Miss Joanna McCombe, in the sum of £2112.88 and

allows the application against the First named Respondent, Mr Colin McLeod to be withdrawn.

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.

G. H

**Graham Harding
Legal Member/Chair**

**28 June 2022
Date**