



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/20/1336

Re: Property at Flat 1/L, 2 Eliza Street, Dundee, Stobswell, DD4 6TF (“the Property”)

Parties:

Mrs Ianthe Kinninmoth, Craighend, Gartness Road, Drymen, Glasgow, G63 0BH (“the Applicant”)

Mr Ian Maich, formerly residing at Flat 1/L, 2 Eliza Street, Dundee, Stobswell, DD4 6TF, and whose current whereabouts are unknown (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision (in absence of the Respondent)

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

Background

This is an application for a payment order dated 16th June 2020 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 £2,490.00 in relation to the Property from the Respondent, and provided with her application copies of the private residential tenancy agreement, and rent arrears statement.

The tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 25th August 2020, and the Tribunal was provided with the execution of service.

A Case Management Discussion was set for 22nd September 2020. In advance of that, the Applicant's representative advised the Tribunal that an eviction of the Respondent was executed on 5th August 2020, when it was found that he had already vacated the Property. The Applicant does not know the Respondent's current address, and his current whereabouts are unknown.

The Respondent was served by advertisement 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.

A Case Management Discussion was held at 14.00 on 6th November 2020 by Tele-Conference. The Applicant did not participate, but was represented by Miss Lisa, solicitor. The Respondent did not participate, and was not represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal was satisfied that the requirements of giving notice 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.

Miss Lisa confirmed that the Respondent quit the Property at a date unknown before 5th August 2020. The Applicant did not know his current whereabouts. Rental of £450.00 per month was payable in advance in terms of clause 4 of the private residential tenancy agreement.

Miss Lisa confirmed that the figure originally sought in this application had increased, as the Respondent has only made one payment of £100.00 towards rental since March 2020. Miss Lisa asked for time to obtain a precise calculation of the sum due by the Respondent from the Applicant.

The Tribunal explained that in any event, it considered that it could not properly grant an order today against the Respondent in his absence for a sum which was significantly more than that sought in the application form.

The Tribunal explained that the Applicant could either seek an order for the sum sought in the application and thereafter bring a further application for further sums of rental which were outstanding, or alternatively, the Applicant was allowed to request an adjournment of the Case Management Discussion in order to allow her to amend her application in terms of Rules 14A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended to the greater sum which she might seek.

In terms of Rule 14A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, a request to amend the

application must be intimated to the Tribunal and to the Respondent at least 14 days prior to a Case Management Discussion.

Miss Lisa asked the Tribunal to adjourn this application to a further date to allow her to provide a written amendment to the Tribunal in which she would seek to increase the sum sought to the figure which is due to the termination of the tenancy. The Applicant cannot intimate that to the Respondent, as she does not know his whereabouts.

However, Rule 6A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended provides that where any formal communication requires to be served on a Party under the Rules, and the party's address is unknown, the communication is deemed to be served if it has been publicised by advertisement on the Tribunal's web-site for not less than 14 days.

Accordingly, the Applicant may apply to the Tribunal to seek that her request to amend her application be publicised by advertisement on the Tribunal's web-site, and she will require to do so.

The Tribunal considered Miss Lisa's submission to be reasonable in the circumstances, and consistent with the overriding objective of the Tribunal to deal with proceedings justly and in a manner which is proportionate to the complexity of the issues and the resources of the parties in terms of Rule 2 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

Rule 28 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended allows the Tribunal discretion on an application by a party to adjourn a hearing on cause shown.

The Tribunal considered that the Applicant has shown there is good reason why an adjournment was necessary, in order to allow her to amend the sum sought in her application to reflect the rental arrears which are outstanding as at the date when the Respondent quit the Property.

It seemed only just that the Applicant be given an opportunity to do so, and the Tribunal accordingly exercised its discretion to adjourn this Case Management Discussion to a further date, in order to allow the Applicant to amend her application.

The Applicant subsequently amended the sum sought to £2,980.00, and provided an updated rent arrears statement disclosing the current arrears of rent.

Thereafter, service was validly effected by advertisement 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 Certificates of Service by advertisement.

Continued Case Management Discussion

A continued Case Management Discussion was held at 10.00 on 6th January 2021 by Tele-Conference. The Applicant did not participate, but was represented by Mrs Cameron, solicitor. The Respondent did not participate, and was not represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal was satisfied that the requirements of giving notice 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 Mrs Cameron with reference to the application and papers to grant an order for payment of the sum of £2,980.00. Mrs Cameron confirmed that this was the current amount of rent arrears to today's date.

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 Mrs Cameron, and was satisfied that these disclosed an outstanding balance of rent arrears of the sum now sought of £2,980.00, which sum remains outstanding. Rent of £450.00 per month was due in terms of Clause 4 of the tenancy agreement. Accordingly, the Tribunal shall make an order for payment of that sum.

Decision

In these circumstances, the Tribunal will make an order for payment by the Respondent to the Applicant of the sum of £2,980.00.

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.

Neil Kinnear

Legal Member/Chair

6 January 2021
Date