

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/20/1548

Re: Property at 37 Craigie Way, Ayr, KA8 0HQ (“the Property”)

Parties:

Mr Adam McLaughlin, 2a Taylor Street, Ayr, KA88AU (“the Applicant”)

Mr Johnathan Cumming, 6C Craigie Avenue, Ayr, KA8 0EQ (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order for the amount of £1,535.07 by the Respondent to the Applicant should be granted.

Background and Case Management Discussion

1. The application for an order for payment of rent arrears under S 71 of the Private Housing (Tenancies) (Scotland) Act 2016 arising from a Private Residential Tenancy Agreement between the parties was made by Rentolease, the Applicant's representatives on 21 July 2020.
2. The following documents were lodged by the Applicant to support the application:
 - a. Tenancy agreement of a Private Residential Tenancy for the property commencing 31 May 2019
 - b. Rent in Ledger up to 15 July 2020
 - c. Report from Stirling Park disclosing new address for Respondent
 - d. Rent Statement 2.5.2019 to 31 March 2020
 - e. Written consent from joint owner Jane McLaughlin 27 May 2020
3. The application was for a payment order in the sum £2,185.07 and indicated as the Rule applicable Rule 111 of the Procedural Rules.
4. On 3 November 2020 the Respondent was served with the case papers and the notification for the Case Management Discussion (CMD) on 7 December 2020 by

Sheriff Officers at the new address identified in the report from Stirling Park dated 28 October 2020. The Tribunal was satisfied that the Respondent had the required notice of the CMD as set out in Rules 17 (2) and 24 (2) of the Procedural Rules.

5. No representations from the Respondent were received by the Tribunal.
6. The CMD took place on 7 December 2020 by telephone call.
7. The Applicant took part and advised that at the CMD his secretary Ms Main rather than Rentlease would act on his behalf. He confirmed no further contact had been made by the Respondent and stated that he had tried on many occasions to discuss payment of arrears with the Respondent, who did not engage in that process and then did a "moonlight flitting" without telling the Applicant. The Applicant only became aware once the Council Tax office advised him that the flat was unoccupied.
8. Ms Main then stated that the deposit of £650 had been returned to the Applicant. After a brief adjournment which allowed her to reconcile the submitted rent schedule and Rent in Ledger she confirmed that the rent arrears were made up of 3 months at the full rent of £650 as per the lease and a final charge of £235.07 for the days up to 10 April 2020 when the tenancy came to an end. As the deposit had been paid to the Applicant she then also confirmed that the sum outstanding was actually £1,535.07 rather than the £2,185.07 stated in the application. The rent charge shown for July 2020 on the Rent in Ledger related to the new tenant and thus should be disregarded. The Applicant now seeks a payment order for £1,535.07.

Findings in Fact:

1. The property was let on a Private Residential Tenancy Agreement commencing on 31 May 2019.
2. The parties are the landlord and tenant of said Tenancy Agreement.
3. The tenancy terminated when the Respondent left the property on 10 April 2020.
4. The monthly rent for the property was £650 payable on or before the 30th day of the month in advance.
5. Rent arrears accrued as per the rent statement
6. The arrears of rent due and outstanding as at the date of the CMD on 7 December 2020 are £1,535.07

Reasons for Decision:

1. The Tribunal considered that the material facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

- (c)raising with parties any issues it requires to be addressed;
 - (d)discussing what witnesses, documents and other evidence will be required;
 - (e)discussing whether or not a hearing is required; and
 - (f)discussing an application to recall a decision.
- (4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

2. However, in terms of Rule 18 of the Rules of Procedure:

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a)may make a decision without a hearing if the First-tier Tribunal considers that—
(i)having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii)to do so will not be contrary to the interests of the parties; and

(b)must make a decision without a hearing where the decision relates to—

(i)correcting; or

(ii)reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

3. The documents lodged are referred to for their terms and held to be incorporated herein.

4. The Tribunal did not consider that there was any need for a hearing as there had been no representations from the Respondent and the application had not been opposed. The facts of the case as set out in the application as amended and further spoken to at the CMD were not in dispute.

5. The Tribunal makes the decision on the basis of the documents lodged by the Applicants and the information given at CMD.

6. Clause 8 of the Tenancy Agreement shows a monthly rental charge of £650.

7. No payments were received for the rent of December 2019, January 2020 and March 2020 at the full rate and for the period up to 10 April 2020 pro rata of £235.07.

8. The Deposit of £650 was released to the Applicant, leaving a total sum of £1,535.07 outstanding.

9. The Respondent made no representations and the amount is thus not in dispute.

10. The outstanding amount of rent due to be paid by the Respondents to the Applicants is thus £1,535.07

Decision:

The Tribunal grants the order for payment of the amount of £1,535.07 by the Respondent to the Applicant.

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.



Legal Member/Chair

7 December 2020
Date