



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/20/2003

Re: Property at 119 Cedar Road, Cumbernauld, G67 3AS (“the Property”)

Parties:

Mr Kevin McMail, 12 Birch Road, Cumbernauld, G67 3PA (“the Applicant”)

Mr Jamie Moonie, Prisoner Number 93667, HM Prison Barlinnie, 81 Lee Avenue, Glasgow, G33 2QX (“the Respondent”)

Tribunal Members:

Jim Bauld (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order should be granted for payment in the sum of TWO THOUSAND THREE HUNDRED AND FORTY POUNDS (£2,340.00).

Background

1. By application dated 18 September 2020, the applicant sought an order for payment under Section 71 of Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) and in terms of rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. On 6 October 2020 the application was accepted by the tribunal and referred for determination by the tribunal. This application was one of three separate applications which had been lodged by the applicant. Two other applications seek an eviction order in respect of a private residential tenancy

(FTS/HPC/EV/20/2004 and FTS/HPC/EV/20/2144).The applications have not been formally conjoined but have been linked and were heard together.

2. A Case Management Discussion (CMD) was set to take place on 20 November 2020 and appropriate intimation of that hearing was given to both parties. The respondent was not able to attend the CMD but his reason for non-attendance was accepted by the tribunal. The tribunal decided to fix a hearing which was set to take place on 11 December 2020. Appropriate intimation of that hearing was given to both parties.

The hearing

3. The hearing took place on 11 December 2020 via telephone case conference. The applicant took part in the telephone case conference and was represented by Mr Michael Muir. The Respondent also took part in the telephone case conference.
4. The tribunal explained the purpose of the hearing and the powers available to the tribunal to determine matters.
5. The tribunal asked various questions of the parties with regard to the application.
6. The tribunal noted that the sum being claimed by the applicant was £2340. The applicant's representative confirmed that was the amount being sought and represented rent arrears which had accrued until the date of the application.
7. The respondent was then questioned by the tribunal. He accepted that he had missed payments but did not think that he owed as much as was being claimed. He indicated that he was currently on remand in prison and was due to face trial in July of next year. He believed that while he was in prison that his universal credit payment in connection with his rent would continue to be made. He indicated that during the early stages of the tenancy he had received £265 each month in respect of the housing element of his universal credit. He had

made payments to the landlord of the monthly rent of £460. These payments had been made by bank transfer. He had added his own money to the amount received via universal credit. He believed that the landlord was entitled to have ongoing universal credit paid directly while the respondent was in prison. He believed he was entitled to continue to receive the housing element of universal credit for a period of six months while on remand.

8. The landlord's representative indicated that his wife had sent a text message to the respondent on 19 June 2020 when it was clear that a rental payment had been missed. The respondent replied to that text message indicating that he was now in quarantine, that his sister was living with him, that she had Covid and that his benefits had been sanctioned. The landlord's representative indicated there had been no further contact with the respondent.
9. The landlord's representative indicated that he had received an email from the universal credit department on 23 July 2020 having made an application for direct payment. No payments have been made. On being questioned further by the ordinary member the landlord's representative indicated that he would make further enquiries with the universal credit staff to ascertain whether any payments were to be made.
10. The tribunal noted that the applicant had provided a rent statement which detailed rental payments received and rent due up to and including 2 September 2020. That statement showed an Arrears figure of £2340 at 2 September 2020. No payments had been made by the respondent since 18 May 2020. Rental payments had fallen due on the second of each of the months in June, July, August and September.
11. The respondent confirmed that he had been remanded in custody on 10 August 2020 and had made no payments since that date. He had accepted that he had missed "a couple of payments" prior to being remanded and on questioning by the tribunal seem to accept that the period from 18 May 2020 when the last payment was made until his remand on 10th August was approximately that period of time.

Findings in Fact

12. The applicant and the Respondent as respectively the landlord and tenant entered into a tenancy of the property which commenced on 2 January 2020.
13. The tenancy was a private residential tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016.
14. The agreed monthly rental was £460.
15. Arrears had started to accrue from May 2020 at the date of the lodging of the application arrears amounted to £2340.
16. The basis for the order for Payment was accordingly established

Reasons for Decisions

17. The tribunal listened carefully to the submissions made by both parties with regard to the amount of rent arrears outstanding in respect of this tenancy. The tribunal accepted that both parties provided their evidence in a straightforward matter based on their understanding of the situation.
18. The tribunal however preferred the evidence provided by the landlord's representative regarding the balance of arrears owed at the 2 September 2020.
19. The tribunal noted that the respondent admitted that he had missed some payments and the tribunal accepted that the rent statement provided on behalf of the applicant was an accurate and complete reflection of the payments made by the respondent up to and including 2 September 2020.

20. The tribunal accepted that the amount owed by the respondent at the 2 September 2020 was £2340 and decided that a payment order should be granted in the sum of £2340.

21. The tribunal has noted that the applicant's representative will ensure that if any payments are made subsequently from universal credit that such amounts are deducted from the payment order being granted by the tribunal.

Decision

The order for payment of the sum of £2340 is granted.

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.

Jim Bauld

11 December 2020

Legal Member/Chair

Date