



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/22/3052

Re: Property at 95 Wylie Crescent, Cumnock, East Ayrshire, KA18 1LT (“the Property”)

Parties:

CFIC Holdings Limited, 13/1 Drumsheugh Gardens, Edinburgh, Midlothian, EH3 7QG (“the Applicant”)

Mr Reece Rutherford, 95 Wylie Crescent, Cumnock, East Ayrshire, KA18 1LT (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatrige (Legal Member) and Ann Moore (Ordinary 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 £ 2,050.00 by the Respondent to the Applicant should be granted.

A: Background

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 the Applicant's agent CKD Galbraith LLP on 25 August 2022.
2. The following documents were lodged to support the application and are referred to for their terms and held to be incorporated herein:
 - a. Copy tenancy agreement between the parties over the property commencing on 19 October 2021.
 - b. Tenancy rent statement for the period from 19 October 2021 to 1 August 2022.
 - c. Housing Benefit award notification.
 - d. Authorisation letter by Applicant for agent.

- e. Written representations from CKD Galbraith LLP to FTT dated 24 October 2022
 - f. Email and letter chain from CKD Galbraith LLP to the Respondent and answers from the Respondent's mother between 9 June 2022 and 12 August 2022.
3. On 19 December 2022 the application and notification of the Case Management Discussion (CMD) was served by Sheriff Officers on the Respondent. The Tribunal was satisfied that the Respondents had the required notice of the CMD as set out in Rules 17 (2) and 24 (2) of the Procedural Rules.
 4. No formal representations were received from the Respondent.

B: Case Management Discussion

5. The Applicant's representative Ms Douglas attended the CMD. The Respondent did not take part in the teleconference call.
6. The legal member explained the purpose of the CMD.
7. Ms Douglas explained that the arrears had now increased to £2,840.48. The Housing Benefit payments showing in the award notification were never paid to the landlord by the tenant and after Galbraith's applied for the Housing Benefit payments to be paid directly to the landlord this has now been in place since October 2022 but there has been no attempt of the Respondent to address the arrears. The difference between the payment due date on the PRT and the rent statement reflects the change mutually agreed by both parties on 22 November 2021 at the request of the tenant to change the payment date from the 19th of the month to the first of the month. This was reflected in the pro rata payment of 22 November 2021. Thus the rent is now due monthly in advance on the first day of the month. The respondent is a single man and the most recent contact with him was in December 2022 when entry was required for a plumber. At that stage the property appeared to be "totally trashed". The landlord's agents had helped the Respondent to apply for Housing Benefit and he did not pass on the payments. The landlord had been very patient and supportive with the Respondent and would have been content with a payment proposal regarding the arrears but nothing had been forthcoming. The Applicant is seeking a payment order.

C: Findings in Fact:

Based on the evidence lodged and the representations of the participants at the CMD the Tribunal makes the following findings in fact:

1. The property was let on a Private Residential Tenancy Agreement commencing on 19 October 2021.
2. The parties were the landlord and tenants of said Tenancy Agreement.
3. The tenancy continues.
4. The monthly rent of £375 is payable on the 1st day of the month and monthly in advance as per clause 2 of the tenancy agreement.
5. Rent arrears of £2,050.00 accrued as shown in the Rent Statements submitted for the period of up to and including 1 August 2022 and are still outstanding for that period.
6. As at 15 February 2023 the amount due for payment by the Respondent to the Applicant is £2,840.48.

7. No time to pay direction application has been received from the Respondent.

D: Reasons for Decision:

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.

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.

4. The Tribunal did not consider that there was any need for a hearing as there had been no representations from the Respondents and thus the arrears are not in dispute.

5. The Tribunal makes the decision on the basis of the documents lodged by the Applicant and the information provided by both representatives at the CMD.

6. The Tribunal is thus satisfied that the Respondent had entered into a Private Residential Tenancy Agreement with the Applicant for the property. The rent was paid as set out in the rent statements lodged. No application for a time to pay

direction or any other representations were provided by the Respondents. The amount stated in the application was due and resting owing as of the date of the CMD. The Respondents had due notice of the amount and has not disputed the amount. As the amount is due and not disputed there is no need for a hearing and the Tribunal thus grants a payment order for the amount of £2,050.00 for arrears of rent up to and including 1 August 2022.

Decision:

The Tribunal grants the order for payment of the amount of £2,050.00 by the Respondents to the Applicant. The decision was unanimous.

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.

Petra Hennig McFatridge

15 February 2023

Legal Member/Chair

Date

P. Hennig McFatridge