



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/22/0536

Re: Property at 28 Spey Place, Johnstone, PA5 0PT (“the Property”)

Parties:

Mr Craig Campbell, The Mullach, Easwald Bank, Kilbarchan, PA10 2EZ (“the Applicant”)

Mr Martyn Mackie, 28 Spey Place, Johnstone, PA5 0PT (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

This was an application for a payment order dated 24th February 2022 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 originally sought in his application payment of arrears in rental payments of £4,200.00 in relation to the Property from the Respondent, and provided with his application copies of the private residential tenancy agreement and rent arrears statement.

The private residential tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*, and the procedures set out in that Act appeared to have been correctly followed and applied.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 27th April 2022, and the Tribunal was provided with the execution of service.

By e-mail to the Tribunal of 6th June 2022, the Applicant requested to amend the sum sought in his application in terms of Rule 14A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended to the figure of £7,000.00, and provided an updated rent arrears statement.

Case Management Discussion

A Case Management Discussion was held at 10:00 on 7th June 2022 by Tele-Conference. The Applicant did not participate, but was represented by Mr Lind, letting agent. The Respondent did not participate, nor was he represented. The Respondent had 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 Mr Lind with reference to the application and papers to grant an order for payment of the sum of £7,000.00. Mr Lind explained that upon being served with a notice to leave in October 2021, the Respondent had ceased making payment of the rent due and thereafter failed to respond to any communications sent to him.

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 rent arrears information provided, and the submissions made by Mr Lind, and was satisfied that these disclosed an outstanding balance of rent arrears totalling £7,000.00. Rent of £700.00 per month was due in terms of Clause 8 of the tenancy agreement.

In terms of Rule 14A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, the Applicant ought to have intimated the amendment to increase the sum sought to the Tribunal and Respondent at least 14 days prior to the Case Management Discussion.

However, in circumstances where the Respondent had not responded to this application at any stage either in writing or by any other form of communication and did not participate in the Case Management Discussion, the Tribunal considered it reasonable to shorten the time for complying with Rule 14A in terms of Rule 16A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

Decision

In these circumstances, the Tribunal made an order for payment by the Respondent to the Applicant of the sum of £7,000.00.

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

Date 7th June 2022