



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/19/1369

Re: Property at 14 The Row, Douglastown, Forfar, DD8 1TL (“the Property”)

Parties:

Mr Roderick Smith Hill, Deneside, Douglastown, Forfar, DD8 1TL (“the Applicant”)

Mr Alistair Stuart Hill, 14 The Row, Douglastown, Forfar, DD8 1TL (“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 an order for payment of the sum of £2,000 rent arrears should be granted

Procedural Background:

The application was made on 3 May 2019. The application asked for payment of the sum of £2,000 for rent arrears for the months of January to April 2019.

Attached to the application were:

1. the Private Rented Tenancy Agreement for tenancy commencing 5 November 2018,
2. copy Notice to Leave dated 25 March 2019 with the date on which proceedings could first be raised stated as 29 April 2019,
3. Certificate of Service for said Notice to Leave by Sheriff Officers confirming service on the Respondent on 27 March 2019,
4. Copy S 11 Notice,

5. statement of arrears up to and including 5 May 2019 for the property showing arrears as at that date of £2,000.

A Case Management Discussion (CMD) was scheduled for 31 July 2019 and both parties advised of the date, time and venue.

A certificate of service by Advertisement on the Respondent dated 30 July 2019 was provided by the First-tier Tribunal.

No representations were received from the Respondent. The Respondent had not contacted the Tribunal prior to the CMD and did not attend.

The Tribunal was satisfied that he had been appropriately notified of the application and the CMD.

On 30 July 2019 the Applicant's solicitors Miller Hendry provided an up to date statement of arrears showing the arrears as at 30 July 2019 at £3,500.

The Case Management Discussion

The Applicant's wife Mrs Hill and the Applicant's legal representative Ms Stronach from Messrs Miller Hendry attended the CMD. The Respondent did not attend. Ms Stronach advised that the arrears still remain at £3,500.

She referred the Tribunal to the documents lodged with the application, which are referred to for their terms and held to be incorporated herein. She explained that the Respondent was currently barred from entering Douglstown due to bail conditions and that he had not occupied the property for some months. Unknown individuals had been seen by to remove furniture from the property. No rent had been paid since December 2018. The Applicant was not aware of anything suggesting that the payment problems are in any way linked to issues regarding relevant benefits.

Although a deposit had been paid by the Respondent this was still lodged with a relevant deposit scheme and is currently not accessible to the Applicant.

She also initially asked to amend the sum sought to £3,500, however after discussion and in light of the wording of Rule 14 (A) (1) of the Procedural Rules due to the fact that the update had not been intimated to the Respondent and the original application had not mentioned a demand for ongoing arrears she moved for a payment order for the original sum.

Findings in Fact:

1. **The parties entered into a Private Residential Tenancy for the property with a start date of 5 November 2018 (clause 6).**
2. **Rent of £500 per month is payable in advance on the 5th of the month.**
3. **From 5 January 2019 to 31 July 2019 no payments were received.**
4. **The Applicant issued to the Respondent a Notice to Leave dated 25 March 2019.**

5. This was served by Sheriff Officers on 27 March 2019.
6. It detailed that the ground on which the Applicants intend to apply to the First Tier Tribunal was "You are in rent arrears over three consecutive months" and in part 3 detailed that the arrears for the months of January, February and March 2019.
7. The Respondent has not made any payments towards the arrears and has not made further rent payments.
8. The outstanding amount as of 31 July 2019 is £3,500.

Reasons for the Decision:

The Tribunal make the decision on the basis of the written evidence lodged by the Applicant and the information given at the hearing by the Applicants representative on his behalf.

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:

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.

The Respondent did not make any written representations and did not attend the CMD. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case.

The rent outstanding as of the date of the Case Management Discussion based on the amounts paid as per the schedule lodged and the rent charge of £500 per calendar month and the information from the Applicant's representative at the hearing is £3,500. The application asked for payment of £2,000. Although a deposit of £500 had been paid to the Applicant this is currently not available towards payment of the arrears and remains lodged with a deposit scheme. The deposit amount was not taken into account as this can be appropriately dealt with once the tenancy ends.

There was no valid defence to the action. It is not in dispute that the sum of rent arrears are due by the Respondent to the Applicant.

The Applicant is entitled to payment of the sum of £2,000 by the Respondent.

Decision:

The Tribunal grants an order for payment of the sum of £2,000.

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-McFatrige

Legal Member/Chair

21. 7. 19

Date