



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) arising from a tenancy under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 ('the Act')

Chamber Ref: FTS/HPC/CV/19/3431

Re: Property at Flat G/2, 25 Crummock Street, Beith, KA15 2BD ("the Property")

Parties:

Mr Stephen Leslie, 8 Ballochyle Place, Gourock, PA19 1BG ("the Applicant")

Miss Sharon Hainey, Flat G/2, Crummock Street, Beith, KA15 2BD ("the Respondent")

Tribunal Members:

Susan Christie (Legal Member)

Elizabeth Dickson (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an Order be made against the Respondent for payment of the sum of Four Thousand Nine Hundred and Thirty-Six Pounds and Sixty Five Pence Sterling (£4936.65) to the Applicant.

Background

1. The application was received by the Tribunal on 24 October 2019.
2. The Notice of Acceptance of the Application by the Tribunal, is dated 21 November 2019.
3. The application type is stated as being made under **Rule 70** of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('the Rules').
4. A Case Management Discussion (CMD) was assigned for 15 January 2020 in Room 107, Glasgow Tribunal Centre, 20 York Street, Glasgow G2 8GT.
5. Written representations were to be lodged by the Respondent by 1 January 2020. None were submitted.

6. The Applicant's Representative lodged further letter on 9 January 2020 with letter of 7 January 2020. This was crossed over to the Respondent.
7. Intimation of the date of the CMD and copies of the supporting papers were sent to the Respondent along with a letter dated 11 December 2019. Sheriff Officers served those on the Respondent on 12 December 2019 by letterbox service.

The Case Management Discussion on 15 January 2020

8. The Applicant was represented by Mrs Duncan. The Respondent did not attend and was not represented. I was satisfied proper intimation had been made and proceeded in her absence.
9. The documents lodged in support of the application were examined and discussed.
10. The application made is specific to **Rule 70** of the Rules of procedure of the Tribunal-Payment Order application for unpaid rent.
11. It was noted as follows
 - The copy tenancy agreement produced is for a different address and Landlord, has a different amount of monthly rent to that in the Application and has a different start date to that relied on by the Applicant
 - The Landlord had a letting agent, now out of business, who never remitted any payments to the Applicant
 - The copy tenancy agreement produced is in any event not in the correct format for a PRT
 - There is no documentation in relation to the rent, payments made etc with the Application
12. The issues noted were whether the Parties entered into a PRT, the terms of it, the rent, whether any rent has been paid and whether the Applicant is entitled to the Order he seeks. A Hearing was required with oral evidence from the Landlord.
13. A Hearing was assigned for 4 March 2020 at 2pm at Glasgow Tribunal Centre, 20 York Street, Glasgow, G2 8GT.
14. A Direction was issued to assist the Tribunal for the Hearing to be held.

The Direction of 15 January 2020

15. The following Direction was issued to the Parties as to the conduct and progress of this Application in terms of Section 16 of Schedule 1 to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017:

The Applicant was required to lodge with the Chamber no later than close of business on 7 February 2020.

- (1) A Copy of the Private Residential Tenancy Agreement being relied upon, if any exists
- (2) Documents showing or tending to show the terms of the agreement with the letting agent contracted to act on the landlord's behalf in relation to the Property let out to the Respondent showing the terms of business
- (3) Documents showing or tending to show the current status of the letting agent and whether they are active, copies of any communications sent to them and received by the Applicant
- (4) Documents showing or tending to show the rent due and separately the rent paid(if any) for Property at Flat G/2, 25 Crummock Street, Beith, KA15 2BD ("the Property") between 1 December 2018 and the date of this Direction
- (5) An indexed and paginated bundle of documents relied on for the Hearing, copied over to the Respondent.

The Respondent was required to lodge with the Chamber no later than close of business on 7 February 2020.

- (1) A written outline of her position in response to the Application for a Payment Order sought including any information in relation to any payments of rent or Housing Benefit type payment (if being received for the Property), to whom the payment was due or paid to, the date of payment for each payment, and documents evidencing this
- (2) A Copy of the Private Residential Tenancy Agreement for the Property, if any exists
- (3) An indexed and paginated bundle of documents relied on for the Hearing, copied over to the Applicant.

16. The Applicant produced documentation in answer to the Direction in two numbered bundles of documents.

17. The Respondent did not lodge a written outline of her position in response or any other documents.

The Hearing

18. The Hearing took place on 4 March 2020 at 2pm at Glasgow Tribunal Centre, Room 110, 20 York Street, Glasgow, G2 8GT.

19. The Applicant was personally present and was represented by Mrs Duncan.

20. Intimation of the date place and time of the Hearing was served on the Respondent by Sheriff Officers on 20 January 2020 by letterbox after Sheriff Officers had spoken to a neighbour who confirmed the Respondent's residence.

21. The Tribunal was satisfied proper intimation of the Hearing had been made on the Respondent and proceeded in her absence.

22. As a preliminary matter the written application made by the Applicant on 7 February 2020 was considered. The sum sued for was amended to £5121.58, based on the correct monthly rent of £375.

23. The Applicant gave oral evidence to the Tribunal.

24. The Applicant sought to restrict the sum sought today to £4936.65 as it has now been established the tenant had vacated the Property on or before 17 February 2020. This was calculated by reference to the figures contained in

the rent schedule, number 1/5 in the bundle for the Applicant. The Rent due from 14 January 2019 to 3 January 2020 brought out a figure of £4746.58 to which £184.93 (based on a calculation of a daily rate) was added for the period up to 17 February 2020.

25. The Applicant relied upon a signed copy of the tenancy agreement produced.
26. The Applicant explained that he had secured the Respondent as a tenant through a Letting Agent who was no longer operating. He was told by the Letting Agent that the tenant's name was Sharon Hailey and had been provided with a signed tenancy agreement which was not in the standard model tenancy format. Throughout he had been kept in the dark and the Letting Agent had not provided him it could be said with a good service. Certain essential aspects of service were lacking in connection with communications, no rent had ever been received by him. However, they had provided him with a copy of the flawed tenancy agreement which related to his Property albeit had a typographical error in the address. It stated that the rent due was £375 per calendar month, payments being due on 3rd of every month and a start date of 14 January 2019 albeit they had verbally told him the start date was 1 December 2018.
27. The Applicant had instructed a Notice to Leave to be served on the Respondent due to non-payment of rent. It was dated 3 September 2019 and had been served on the Respondent by Sheriff Officer letterbox service on 4 September 2019 the Sheriff Officer having established that the Respondent lived at the Property. It stated an Application for eviction would not be made before 4 October 2019. It appears as number 1/3 in the bundle for the Applicant.
28. He spoke of Sheriff Officers having been instructed on his behalf via his solicitor subsequently to make further checks. That was done on 17 February 2020 when the same Sheriff Officers attended at the Property and confirmed the Property to be empty and unoccupied. Further the Officer spoke with a neighbour who confirmed that the Property had been empty for some time. He viewed through the letterbox where it was clearly unoccupied, and a vast amount of mail was behind the door. Pictures were taken and produced along with the Sheriff Officer Report. He also viewed in the front window and determined the Property was completely unfurnished.
29. The Tribunal also considered the information contained within an e mail from the local authority in which it was confirmed that a tenant had been registered in the Property for Council Tax purposes since 1 December 2018, albeit it was the owner himself who notified of this tenant incoming. It appears as number 1/7 in the bundle for the Applicant.

Findings in Fact

- I. The Parties entered into a Private Residential Tenancy with a start date of 14 January 2019 at a rent of £375 per calendar month payable on the 3rd of every month.
- II. The Applicant served on the Respondent a Notice to Leave dated 3 September 2019 which had been served on the Respondent by Sheriff Officer letterbox service on 4 September 2019 having established that the

- Respondent lived at the Property. It stated an Application for eviction would not be made before 4 October 2019.
- III. On 17 February 2020 the same Sheriff Officers attended at the Property and confirmed the Property to be empty and unoccupied. Further the Officer spoke with a neighbour who confirmed that the Property had been empty for some time. He viewed through the letterbox where it was clearly unoccupied, and a vast amount of mail was behind the door. Pictures were taken and produced along with the Sheriff Officer Report. He also viewed in the front window and determined the Property was completely unfurnished.
 - IV. The Tribunal finds that the Respondent had vacated the Property by 17 February 2020.
 - V. A Notice to Leave having been served and the Respondent having vacated the Property by 17 February 2020, the tenancy came to an end on that date. This date was the later of the two dates being the date specified in the Notice to leave and the date the Respondent had vacated the property by.
 - VI. The rent due between 14 January 2019 and 17 February 2020 is £4936.65.
 - VII. No payments having been made by the Respondent to the Applicant of rent, the sum due to be paid by the Respondent to the Applicant is £4936.65.

Reasons for Decision & Decision

The Tribunal was satisfied that the parties had entered into a Private Residential Tenancy Agreement.

The Tribunal relied on the evidence in the form of three Sheriff Officers reports over the duration of the Application. On the first two occasions the Sheriff Officers had been satisfied that the Respondent occupied the Property and served papers. On the third occasion on 17 February 2020 they were satisfied she no longer occupied the Property and by their observations confirmed it was empty and unoccupied. The Tribunal accepted that evidence.

Having considered the evidence alongside the terms of Section 50 of the Act, it was clear the tenancy had come to an end by 17 February 2020. The Tribunal considered the oral testimony of the Applicant alongside the terms of the tenancy agreement produced and the rent schedule. It was satisfied the total rent due between 14 January 2019 and 17 February 2020 is £4936.65. No payments having been made by the Respondent to the Applicant of rent, the sum due to be paid by the Respondent to the Applicant is £4936.65.

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.

Susan Christie

Legal Member/Chair

4 March 2020
Date