



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/18/3166

Re: Property at 31 Glencoats Drive, Paisley, PA3 1RP (“the Property”)

Parties:

Mr Johnson Olusola-Johnson, 11 Hogan Way, Motherwell, ML1 5TR (“the Applicant”)

Mr Daryl Thomas, 31 Glencoats Drive, Paisley, PA3 1RP (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the Respondent to the Applicant in the sum of £1040.00.

Background

1. By application dated 21 November 2018 the Applicant applied to the Tribunal for an order for payment by the Respondent in respect of rent arrears due by the Respondent from his tenancy of the property. The alleged amount of the arrears as at the date of the application was £1040.00.
2. The Applicant provided the Tribunal with a copy of the Private Residential Tenancy Agreement, a copy of a Notice to Leave and copy bank statements.
3. Following further correspondence between the Applicant and the Tribunal the application was accepted by Notice of Acceptance dated 21 February 2019 and a Case Management discussion was assigned.

4. Intimation of the Case Management Discussion was given to the Applicant by letter dated 11 March 2019 and to the Respondent by Sheriff Officers on 12 March 2019.

The Case Management Discussion

5. The Case management Discussion was held on 2 April 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow. It was attended by the Applicant. There was no appearance by the Respondent.
6. The Applicant advised the Tribunal that he had received intimation from the Respondent's partner that the Respondent had moved out of the property on 1 April 2019. The Applicant confirmed that there were further proceedings pending before the Tribunal for the eviction of the Respondent from the property and for further rent arrears but a date had not yet been fixed for a Case Management Discussion or Hearing.
7. The Applicant confirmed that the amount of rent due by the Respondent as at the date of making the application to the Tribunal was £1040.00 and referred the Tribunal to the bank statements lodged with his application. The applicant went on to say that no further payments had been received from the Respondent and the Housing Benefit payments that had been paid had stopped in December. 2018. According to the Applicant he had advised the Tribunal office by email on 4 February 2019 that the amount of arrears of rent then due by the Respondent had risen to £3200.00.
8. In response to a question from the Tribunal Chairman the Applicant confirmed that he had not after 20 February 2019 requested to amend the application to increase the sum claimed in accordance with Rule 14A of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. ("the 2017 Rules")
9. It was explained to the Applicant that in the absence of a request to amend in accordance with the 2017 Rules the Tribunal could not grant an order in excess of the sum claimed in the application. It would of course be open to the Applicant to amend the sum claimed in the further proceedings he had commenced against the Respondent for arrears of rent.
10. The Applicant indicated to the Tribunal that he was not hopeful of recovering any funds from the Respondent but wished the Tribunal to grant the order for payment as sought in the Application. The Applicant also expressed his concern at the length of time it had taken for his application to be determined given that it had been lodged with the Tribunal in November and it was now April.

Findings in Fact

11. The parties entered into a Private Residential tenancy agreement that commenced on 5 June 2018 at a rental of £500.00 every 4 weeks.
12. The Applicant received payment until December 2018 of part of the rent amounting to £240.00 every 4 weeks by way of Housing Benefit paid into his bank account.
13. The Respondent was due to pay the Applicant £260.00 every 4 weeks from the commencement of the lease.
14. The Respondent failed to make any payment to the Applicant in August, September, October or November 2018.
15. As at the date of the application to the Tribunal the Respondent owed the applicant £1040.00 by way of rent.

Reasons for Decision

16. Although the Respondent has continued to fail to pay rent due to the Applicant after the date of the application the Tribunal can only consider the application based on the rent said to be due as at the date of the application as the Applicant did not request an amendment of the sum claimed after the coming into force of Rule 14A.
17. As the applicant has a further application pending before the Tribunal for both eviction and rent arrears it will be open to him to seek to amend the sum claimed in the application for any sum said to be due and not included in this application.
18. The Tribunal was satisfied that there was a Private Residential Tenancy Agreement in place between the parties with a rent of £500.00 every 4 weeks.
19. The Tribunal was also satisfied that the Respondent had failed to pay the balance due by him after payment of Housing Benefit. This amounted to £1040.00 as at the date of the application to the Tribunal.
20. The Tribunal was therefore satisfied that the Applicant was entitled to an order for payment of £1040.00.

Decision

21. The applicant is entitled to an order for payment by the Respondent to the Applicant in the sum of £1040.00.

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.

Graham Harding

Legal Member/Chair

2 April 2019

Date