



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/19/3930

Re: Property at 42 Fort Street, Ayr, South Ayrshire, KA7 1DE (“the Property”)

Parties:

Mr Matthew Wickham, Flat 01, 92 Dundrennan Road, Glasgow, G42 9SG (“the Applicant”)

Ms Karen Kerr, 42 Fort Street, Ayr, South Ayrshire, KA7 1DE (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision (in absence of the Respondent)

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

Background

This is an application for a payment order dated 11th December 2019 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 sought in his application payment of arrears in rental payments from the Respondent in respect of the Property, which were stated to be at the date of the application £2,180.00 with any further rent arrears which accrued thereafter.

The Applicant 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 30th December 2019, and the Tribunal was provided with the execution of service.

Case Management Discussion

A Case Management Discussion was held on 29th January 2020 at Russell House, King Street, Ayr. The Applicant did not appear, but was represented by Mr Nixon, letting agent. The Respondent did not appear, nor was she represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

Mr Nixon, in response to an earlier enquiry by the Tribunal, had provided the Applicant's address to replace the "care of" address earlier provided. He had also provided confirmation that the Applicant was the sole shareholder and director of Wickham Holdings Limited, which is the heritable proprietor of the Property. The lease agreement, however, is in the Applicant's name.

Mr Nixon also advised the Tribunal that the Respondent has indicated that she will quit the Property on 31st January 2020. Monthly rental of £850.00 is to be paid in advance on the 24th day of each month in terms of clause 8 of the lease agreement.

Consequently, Mr Nixon provided the Tribunal with a further updated rent arrears statement to 31st January 2020, applying a pro rata daily rate for the period 24th to 31st January. That confirmed that rent arrears total £3,249.35, and Mr Nixon invited the Tribunal with reference to the application and papers to grant an order for payment of that amount.

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 copy updated rent arrears statement provided, and the submissions made by Mr Nixon, and was satisfied that these disclosed an outstanding balance of rent arrears in the sum sought of £3,249.35.

Accordingly, the Tribunal shall make an order for payment of that sum.

Decision

In these circumstances, the Tribunal will make an order for payment by the Respondent to the Applicant of the sum of £3,249.35.

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

29/01/20

Date