



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) 2016 Act

Chamber Ref: FTS/HPC/CV/19/2348

Re: Property at 78 Hareleeshill Road, Larkhall, ML9 2RB (“the Property”)

Parties:

Kilt Properties, 3 Pettits Lane, Romford, Greater London, RM1 4HL (“the Applicant”)

Mr Craig Clark, whose present whereabouts are unknown (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member)

Decision (in absence of the Respondent)

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

Background

- 1) This is an application by the Applicant for civil proceedings in relation to a private residential tenancy in terms of rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”), namely an order for payment of rent arrears. The tenancy in question was a Private Residential Tenancy Agreement of the Property by the Applicant to the Respondent dated 29 June 2018 and with start date on that same day.
- 2) The application was dated 26 June 2019 and lodged with the Tribunal shortly thereafter. The order sought in the application was for £800 of rent arrears.
- 3) The lease and a statement of the arrears were not lodged with the application and when the application called at a previous case management discussion (“CMD”) on 26 September 2019 the then Legal Member issued a Direction seeking that the Applicant lodge both and adjourned the CMD.

- 4) The Direction allowed the Applicant until 6 November 2019 to lodge a copy of the lease and statement of arrears. These were lodged late on 11 November 2019.
- 5) The lease shows rent due of £350 per month due in arrears on the 29th of each month. The statement shows irregular payments by the Respondent, ultimately leaving a balance of £800 due at the point the Respondent left the Property (said to be on 1 July 2019).

The Hearing

- 6) On 20 November 2019, at an adjourned CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting at Glasgow Tribunals Centre, there was no appearance for any party.
- 7) The Applicant's representative, John McIlquham was contacted by the clerk by telephone on my request. He apologised for overlooking the CMD but confirmed that he was satisfied to rely on the application paper.
- 8) In regard to the Respondent, further to the Respondent vacating the Property the Applicant attempted to obtain a forwarding address but the Respondent did not respond to email contact. Service by Advertisement was granted and undertaken (first for the original CMD and then for today's adjourned CMD). A Certificate of Service by Advertisement was prepared by the Tribunal's clerk and provided to me.
- 9) Further, on receipt of the lease, I noted an email address for the Respondent. I requested that the Tribunal clerks email the Respondent with a brief email to alert him of the Service of Advertisement. This took place on 17 November 2019. No response was received from the Respondent.
- 10) In all the circumstances, I was satisfied to consider the application in full at the CMD in the absence of the Respondent.
- 11) The application did not seek any order in respect of expenses or interest at any contractual rate.

Findings in Fact

- 12) On 29 June 2018, the Applicant let the Property to the Respondent by a Private Residential Tenancy with a start date of 29 June 2018 ("the Tenancy").
- 13) Under the Tenancy, the Respondent was to make payment of £350 per month in rent to the Applicant on the 29th of each month.
- 14) The Respondent vacated the Property on or about 1 July 2019.

- 15) As of 1 July 2019, there was unpaid rent of £800 due by the Respondent to the Applicant in terms of the Tenancy being the rent arrears accrued that had accrued over a period commencing 29 January 2019.
- 16) On 26 July 2019, the Applicant raised proceedings for an order for payment of the rent arrears of £800.
- 17) As of today, there was unpaid rent of £800 due by the Respondent to the Applicant in terms of the Tenancy less applied deposit.
- 18) The Respondents provided no evidence of payment of any part of the said unpaid rent of £800 nor any dispute that the said unpaid rent was due in full.
- 19) The CMD was competently intimated by the Tribunal upon the Respondent by advertisement.

Reasons for Decision

- 20) The application was in terms of rule 111, being an order for civil proceedings in relation to a private residential tenancy. I was satisfied, on the basis of the application and supporting papers, that rent arrears of £800 were outstanding as at the date of the CMD for the period to conclusion of the Tenancy.
- 21) I was satisfied that the necessary level of evidence for such civil proceedings had been provided. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal and I was satisfied to make a decision at the CMD to award the sum sought of £800 with interest at 8% from the date of the decision.

Postscript

- 22) The Applicant did not appear at the original CMD either. Although a party is entitled to rely on written submissions, it is courteous to inform the Tribunal of this, as non-appearance may also indicate non-insistence in the application. This, combined with the Applicant's late response to the Directions, could have resulted in refusal of the application, or a further adjournment, in similar circumstances.
- 23) It is further noted that the lease refers to a deposit of £350 presumably held with an approved tenancy deposit scheme provider. If the Applicant is successful in uplifting this deposit, and there are no further claims against the Respondent under other provisions of the lease, the deposit sum should of course be treated as a payment to account of the sum awarded today.

Decision

- 24) In all the circumstances, I was satisfied to make the decision to grant an order against the Respondent for payment of the sum of £800 to the Applicant with interest at 8% per annum from today's date until payment.

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.

J.Conn

Legal Member/Chair

Date

20 November 2019