



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/22/3522

Re: Property at TR 74 Arklay Street, Dundee, DD3 7LH (“the Property”)

Parties:

Mr Richard Bailey, 6 Castle Gogar Rigg, Edinburgh, EH12 9FP (“the Applicant”)

Mr Ryan Leddie, formerly residing at TR 74 Arklay Street, Dundee, DD3 7LH, and whose current whereabouts are unknown (“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 was an application for a payment order dated 28th September 2022 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 originally sought in his application payment of arrears in rental payments of £1,074.90 in relation to the Property from the Respondent, and 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 apparently been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 30th November 2022 by depositing them through the letterbox of the Property, and the Tribunal was provided with the execution of service.

Thereafter, the Applicant by e-mail from his representative to the Tribunal dated 19th January 2023 requested that the sum claimed be amended to £661.18, and provided an updated rent arrears statement.

A Case Management Discussion was held at 14:00 on 25th January 2023 by Tele-Conference. The Applicant did not participate, but was represented by Miss Young, letting agent. The Respondent did not participate, nor was he represented. The Respondent had not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal was initially satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

However, upon discussion with Miss Young, the Tribunal noted that the updated rent arrears statement had as a credit the tenancy deposit. Miss Young confirmed that the Applicant had obtained payment of this at the conclusion of the tenancy.

Miss Young confirmed that the tenancy ended when the Respondent quit the Property on 28th September 2022. Self-evidently, that date was two months and two days before purported service of the application papers by the Tribunal at the Property. Accordingly, it became apparent that there had not been valid service of this application upon the Respondent.

In these unusual circumstances, and after discussion with Miss Young, the Tribunal continued the Case Management Discussion to a further date to be identified, in order to allow Miss Young to seek to obtain a current address for the Respondent, to amend his address in this application and thereafter to allow the Tribunal to serve the application papers upon him, which failing if the Respondent could not be traced for Miss Young to apply for service by advertisement.

Thereafter, the Applicant was unable to trace the Respondent's current address, and service was validly effected by advertisement in terms of Rule 6A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, and the Tribunal was provided with confirmation of service by advertisement.

The Continued Case Management Discussion

A continued Case Management Discussion was held at 10:00 on 27th April 2023 by Tele-Conference. The Applicant did not participate, but was represented by Miss Young, letting agent. The Respondent did not participate, nor was he represented.

The Respondent had not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Tribunal was invited by the Miss Young with reference to the application and papers to grant an order for payment of the sum of £661.18. She explained that the lease ended on 28th September 2022, and referred the Tribunal to the rent arrears statement which disclosed that arrears of rent and charges to that date under deduction of the tenancy deposit recovered by the Applicant amounted to the amended sum sought.

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 rent arrears information provided, and the submissions made by Miss Young, and was satisfied that these disclosed an outstanding balance of rent arrears totalling £661.18. Rent of £390.00 per month was due in terms of Clause 8 of the tenancy agreement. Accordingly, the Tribunal made an order for payment of that sum.

Decision

In these circumstances, the Tribunal made an order for payment by the Respondent to the Applicant of the sum of £661.18.

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.

N. Kinnear

27th April 2023

Legal Member/Chair

Date