



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/22/2889

Re: Property at 76 Duncan Crescent, Peterhead, AB42 1QX (“the Property”)

Parties:

Alison Morgan, John Morgan, 43 Scotstown Crescent, Peterhead, AB42 1LU (“the Applicants”)

Miss Aryana Ivana Tortolano, 76 Duncan Crescent, Peterhead, AB42 1QX (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member) and Helen Barclay (Ordinary 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 9th August 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 Applicants originally sought in their application payment of arrears in rental payments of £2,035.00 plus £200.00 agency fee in relation to the Property from the Respondent, and provided with their 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 2nd November 2022, and the Tribunal was provided with the execution of service.

Shortly prior to the Case Management Discussion, the Applicants provided an updated rent arrears statement disclosing arrears to 14th November 2022 of £2,763.53.

Case Management Discussion

A Case Management Discussion was held at 10.00 on 6th December 2022 by Tele-Conference. The Applicants did not participate, but were represented by Ms Wilson, letting agent. The Respondent did not participate, nor was she 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.

Ms Wilson referred to the updated rent arrears statement, and confirmed that the current rent arrears as at today's date were £3,033.53. The increase was attributable to a further rental payment of £370.00 being due on 4th December 2022, and a payment of £100.00 made by the Respondent on 19th November 2022.

Ms Wilson conceded that there was no provision in the lease agreement entitling the Applicants to claim the agency fee of £200.00 from her.

Ms Wilson requested to amend the sum claimed in the application to that figure in terms of Rule 14A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, and sought the Tribunal's permission to shorten the 14 day period for intimation of the amendment upon the Respondent in advance of today's Case Management Discussion in terms of Rule 16A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Tribunal considered in all the circumstances that it would consent to the amendment, and shortened the 14 day period of intimation on the Respondent to nil in circumstances where the updated rent arrears statement of 14th November 2022 had been intimated to her more than 14 days in advance of the Case Management Discussion.

The Tribunal was then invited by Ms Wilson with reference to the application and papers to grant an order for payment of the sum of £3,033.53.

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.

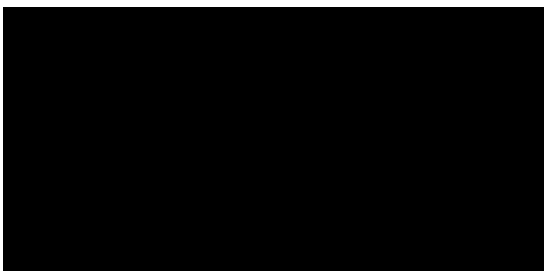
The Tribunal considered the terms of the private residential tenancy agreement, the rent arrears information provided, and the submissions made by Ms Wilson, and was satisfied that these disclosed an outstanding balance of rent arrears due of £3,033.53. Rent of £370.00 per month was due in terms of clause 7 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 Applicants of the sum of £3,033.53.

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.



Legal Member/Chair

6th December 2022

Date