



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/CV/22/3377

Re: Property at 25 Thomson Road, Peterhead, AB42 3FJ (“the Property”)

Parties:

**Mr Michael Peddie, Mrs Linda Peddie, 2 Inverugie Road, Peterhead, AB42 1QW
 (“the Applicants”)**

**Mr Ewan Finnie, Mrs Annelyse Finnie, 27 Pusey Place, Peterhead, AB42 2ZA
 (“the Respondents”)**

Tribunal Members:

Nairn Young (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondents)

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

- Background
- 1. This is an application for an order for payment of rent arrears alleged to be owed by the Respondents to the Applicants in terms of an assured tenancy agreement at the Property, which has now terminated. It called for a hearing on 14 December 2023, by teleconference. The first-named Applicant was on the call in-person and spoke on behalf of both Applicants. The Respondents were not on the call and were not represented. The commencement of the hearing was delayed by 10 minutes, in case they were experiencing some technical issue, but there remained no contact from them.

2. This matter has a fairly lengthy procedural history. The application was originally granted at a case management discussion ('CMD'), in the Respondents' absence, on 17 February 2023. On 2 March 2023, the Respondents sought recall of that decision, on the basis that the first-named was out of the country and the second misunderstood the tribunal process. That application was granted on 8 March 2023 and a further CMD fixed, with the Respondents directed to set out their defence in writing, by 31 March 2023. They did not do so. The Applicants asked the Tribunal to determine the matter in the absence of a hearing, on that basis. It declined to do so by a decision dated 2 May 2023. On 3 May 2023, a written statement of the Respondents' defence to the application was lodged with the Tribunal. The CMD took place on 28 June 2023. It appears from the note of that CMD that both Respondents were present. The matter was continued to an evidential hearing, which took place on 5 September 2023.
3. Around an hour and a quarter prior to the evidential hearing, the second-named Respondent emailed the Tribunal to indicate that she would not be able to attend, "Due to an unforeseen family emergency." She indicated that she had to attend hospital with a family member; but did not provide any evidence to support that, or indicate whether (or why) the emergency also meant the first-named Respondent could not attend. In fact, neither Respondent attended the hearing. On the basis that it appeared on the face of it that the Respondents might have a good reason for being unable to attend, the Tribunal adjourned the hearing, without hearing any evidence, to another date. It made a direction requiring, among other things, the Respondents to submit evidence to support the reason given for their failure to attend (for example a letter from a doctor) and why, on the basis of that reason, they were both unable to attend, no later than 19 September 2023. The direction further stated: "The Respondents are warned that failure to satisfy the Tribunal that there was a genuine reason for their non-attendance at the hearing of 5 September 2023, within the time-limit stipulated above, may result in an award against them of the Applicants' expenses related to adjournment of that hearing."

4. On 19 September 2023, the Respondents sent pictures which appeared to show a child in hospital. The child was not identified; neither was there any date given as to when the pictures had been taken. The Tribunal indicated that it did not consider the photographs in themselves answered the requirements made in the direction. It made a further direction in the same terms as the previous one, allowing the Respondents until 6 October 2023 to respond, and repeating the warning re: expenses.
5. On 6 October 2023, the second-named Respondent sent an email confirming that the photographs showed her daughter and her in hospital. There was no indication given as to when the photographs were taken. There was no indication as to how the photographs explained the absence of the first-named Respondent at the hearing. The Tribunal made a final direction, again asking for the information required by the first; but also asking for an explanation for the Respondents' failure to answer the previous directions. The Tribunal again warned that failure to satisfy it that there was a genuine reason for their non-attendance at the hearing might result in a finding of expenses against them.
6. On 3 November 2023, the second-named Respondent contacted the Tribunal to say that she awaited a doctor's letter and would, "hopefully," confirm the position on 6 November 2023, following an appointment.
7. No further communication has been received from the Respondents.
8. The Tribunal considered that there had been a consistent failure to engage with the Tribunal process on the part of the Respondents. Their responses to the directions had been dilatory and, at best, partial. On that basis, it considered it would not be fair to delay hearing the matter further and it therefore proceeded with the hearing, in the Respondents' absence.

- Findings in Fact

9. The parties entered into an assured tenancy which commenced on 11 February 2013 and ended on 1 August 2022.
10. The rent due under the tenancy (in the period this application is concerned with) was £850 per month.
11. The Respondents failed to pay any rent in any of the months of March to July 2022, inclusive, with the consequence that they were in arrears of rent totalling £4,250, at the end of the tenancy.
12. The Respondents have not made any payment towards the arrears since.
13. The deposit that was paid at the commencement of the tenancy was returned to the Applicants by the approved scheme holding it on the basis that it would be applied in full by them to necessary repairs following the end of the tenancy.
14. The Respondents made certain improvements to the Property while they inhabited it, on the basis that they intended at some point to purchase it.
15. At some point during the tenancy, the first-named Applicant said that the Respondents would be given, "some consideration," for any increase in value to the Property caused by the improvements, without specifying what that would be, or how it might be assessed.

- Reasons for Decision

16. The Tribunal were satisfied the full amount of arrears as set out above at para.11 remained outstanding and that, therefore, an order for payment of that amount should be made. The Respondents, in their written submissions and at the CMD, indicated only two grounds of opposition to that: that the

deposit had been intended to pay the final month's rent; and that the Applicants had undertaken to pay them, "some consideration," for the improvements they had made to the Property.

17. In relation to the first of these: the first-named Applicant gave evidence at the hearing that the reason given to the approved deposit scheme to return the deposit in full to the Applicants was that it would (partially) cover the cost of repairs, only. There was no contrary evidence presented by the Respondents. The Tribunal accepted this explanation as truthful, therefore, and rejected the suggestion that any of the deposit was to be applied to the rent arrears.
18. Regarding the Respondents' second point: the first-named Applicant was candid in admitting that he had talked to the Respondents at one point about giving them 'some consideration' for any increase in value to the Property that was a result of the work they carried out on it. This was, he said, contingent on their having added that value. No specific sums were discussed. He considered that no value had ultimately been added, taking into account the damage that had been caused by the Respondents prior to leaving the Property. No evidence was presented that any specific sum had been agreed between the parties as being due by the Applicants to the Respondents as consideration for improvements.
19. The Tribunal considered that there was no evidence that the parties had reached any binding agreement in relation to compensation for improvements, since the description of the discussion between them on that point was too vague to create a contract between them, there being no shared idea as to the essentials of the agreement. Even if it had done, the Tribunal noted that the Respondents would not be entitled to set off the debt against the rent liability, on the basis that it was not a liquid debt, its amount being both uncertain and disputed.
20. The Applicants made a request for expenses also to be awarded in regard to the whole procedure. The Tribunal quoted the terms of rule 40 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure

2017, which allows for such award only to the extent that a party, “through unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense.”

21. The Tribunal did not consider that the Respondents’ behaviour up to the CMD of 28 June 2023 could be categorised as ‘unreasonable.’ The Tribunal, in allowing the application for recall, had accepted that the Respondents had a reason for being unable to attend the first CMD and, while there was a failure to make written submissions timeously, the written submissions were ultimately made in advance of the CMD of 28 June 2023 and did disclose a stateable case. The Respondents are unrepresented and it would too harsh a characterisation of their failure to submit their written case on time to describe it as ‘unreasonable’ behaviour, given the submissions were available in time to give fair notice of their case prior to the next scheduled consideration of it.

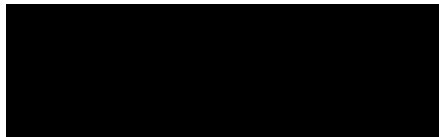
22. However, the Tribunal did consider that the failure on the part of both Respondents to appear at the hearing of 5 September 2023 was unreasonable. The explanation given had not been adequately evidenced and the Tribunal therefore did not find it credible. In any event, it served only to explain the absence of one of the Respondents, not both of them. As a result of that failure, the matter had had to be adjourned to this hearing, with considerable procedure in between to attempt to get the Respondents to give an adequate response to the various directions issued. The failure to respond adequately to the directions was also unreasonable, there having been at no stage any explanation given for it. The matter should have been capable of being determined at one hearing, rather than two, and without additional procedure in between. The Applicants had therefore incurred unnecessary additional expense in the instruction of their solicitor to attend the hearing in September and in considering and addressing the procedure since. The Tribunal therefore considered that an award of expenses in favour of the Applicants was justified, in terms of rule 40, in regard to appearance at the first hearing and any work done between that hearing and this.

- Decision

Order made for payment by the Respondents to the Applicants of the sum of FOUR THOUSAND, TWO HUNDRED AND FIFTY POUNDS STERLING (£4,250), with expenses, as taxed by the Auditor of the Court of Session, in regard to appearance at the hearing of 5 September 2023 and any other expenses properly incurred between that hearing and the hearing of 14 December 2023.

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

14th December 2023
Date