Housing and Property Chamber
First-tier Tribunal for Scotland

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/18/1585

Re: Property at Flat 1/1, 18 Campbell Street, Greenock, Inverclyde, PA16 8AP ("the Property")

Parties:

Mrs Marie Annetta Dowden, 38 Alverstone Road, Whippingham, East Cowes, Isle of Wight, PO32 6NZ ("the Applicant")

Mr Christopher Aitken, Mrs Julie Arrowsmith Aitken, Loseker Strasse, 2/5 Sennelager, Paderborn, Germany; Loseker Strasse, 2/5 Sennelager, Paderborn, Germany ("the Respondents")

Tribunal Members:

Rory Cowan (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that a Payment Order in the sum of £2,373 should be issued in favour of the Applicant.

- Background

The Applicant submitted an application to the Tribunal which was received by the Tribunal on 25 June 2018 (the Application). The Application initially sought a Payment Order of £4,400. Following a Case Management Discussion (CMD) held on 31 October 2018, the amount sought by way of a Payment Order was amended to the sum of £4,457.36. The Respondents did not attend the CMD, but they had lodged written representations prior to same. The Applicant attended the CMD and made representations. The issues in dispute and in agreement were identified and a Hearing was fixed for 7 January 2019 to determine the Application. In addition, a Direction under Rule 16 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 was issued to the Respondents for them to produce further information no later than 30 November 2018. The said direction and

the date for the Hearing were intimated to the Applicant and the Respondents. Notwithstanding, no further information was received from the Respondents until 17 December 2018. In that communication, the Respondents confirmed that they would not be attending the Hearing on 7 January 2019 and made further representations to be considered by the Tribunal.

- The Hearing

The Hearing took place in the absence of the Respondents. The Applicant appeared and represented herself. Notwithstanding the terms of Rule 22 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, the Applicant sought to produce a letter dated 9 November 2018 from SSE to vouch for the value of "top ups" made by her to the electricity meter within the Property. Although no explanation was given by the Applicant for the lateness of this document, the Tribunal nonetheless considered same as detailed below.

The Applicant gave evidence on her own behalf. There were no other witnesses.

She confirmed that the lease for the Property has been entered into with the Respondents for an initial term of 30 March 2017 until 29 September 2017. The agreed rent was £400 per calendar month. The Respondents were living abroad at the time and negotiations were initially made via email although a Mr Andrew Gourlay was also involved to start with and had introduced the parties to one and another and in relation to the Property. On 17 February 2017 in an email from Mrs Arrowsmith Aitken, the Applicant was asked not to involve Mr Gourlay any further regarding the negotiations stating:

"I would very much appreciate if you could contact us direct as having a third party can lead to misunderstandings and is not very fair on Mr Gourlay.
He is a very good friend to Christopher and a good tenant to yourself and do not like to put him in the middle of our contract."(sic).

The Applicant's evidence that Mr Gourlay was a tenant of hers and that he held no other role beyond that albeit on occasion he did, from time to time, carry out some works to properties she owned in lieu of rent arrears owed. Her evidence was that a Mr Gisby was the property agent albeit he had not been involved with this tenancy.

After that, the Applicant confirmed she dealt with the Respondents directly in concluding the terms of the lease for the Property. The Applicant confirmed that she had not inspected the Property before the start of the tenancy and that there was no inventory or schedule of condition for the Property at that time.

The Applicant indicated that, although the lease commenced on 30 March 2017, it was understood that the Respondents would not take occupation of the Property. The Respondents were based in Germany and employed in the Armed Forces. Notwithstanding, it was understood that at some point (yet to be determined) they would return to the United Kingdom and take up occupation of the Property.

The Applicant also gave evidence that there had been discussions involving Mr Gourlay whereby the Respondents had asked to redecorate the Property and that

the Applicant had agreed to that and that she would pay for the costs of the materials such as paint. Her only condition was that the colours used were neutral. After that, the Applicant's position was that the redecoration of the Property must have proceeded on the basis of instructions from the Respondents as all she did was to pay for some materials purchased by Mr Gourlay.

That the Respondents never took occupation of the Property. On or around the end of September 2017 the Applicant realised that the Respondents had not paid the rent due for October 2017. Her position was that she was not initially concerned as she knew they were in Germany and were in full time employment and that they were not aware of when they would return to the United Kingdom. She also indicated that she did have a general discussion with Mr Gourlay who indicated that he had not heard regarding the Respondents intended date of return, but that they were due to come to the United Kingdom for Christmas 2017 and that things should be clarified then. The Applicant indicated that she felt that rent would therefore be brought up-to-date once the Respondents returned and took occupation of the Property.

The position of the Respondents as detailed in the response lodged was then put to the Applicant.

In particular she was asked if Mr Gourlay had ever stated on or around August or September 2017 that he had spoken to the Respondents and that they did not want to continue with the lease of the Property. Her response to that question was that she had not.

The Applicant was then asked to confirm her position in relation to the suggestion in the response that, following such a discussion with Mr Gourlay, she had offered to vary the rent and/or pay council tax until the Respondents knew what they were doing. Again she answered that she had no such discussion.

Her evidence was that it was not until on or around February 2018 that she had any contact with the Respondents. Her position was that in early February 2018 she was concerned about the non-payment of rent and resolved to write to the Respondents. She had no formal address and did not want to communicate by email. As such she wrote a letter to the Respondents at the military base that was the last one she was aware they had been at. She wrote to them care of the base commander. The letter was sent on 20 February 2018 and raised the issues of the rent arrears – at that point they amounted to £2,400 – and an explanation of their intentions (they had still not taken occupation).

In response to this letter, the Applicant said that she received a telephone call from Mrs Arrowsmith Aitken on or around 28 February 2018. The Applicant indicated that Mrs Arrowsmith Aitken had been angry and aggressive in the call. In the call she had insisted that she had given notice that the Respondents did not want to continue with the lease, but did not elaborate by what means and when notice was give. The Applicant stated that she disputed this, but said little else as the call was left by Mrs Arrowsmith Aitken saying that she would take advice on the issue. The Applicant took from that that the Respondents would revert once that had obtained advice.

By on or around 10 April 2018 nothing further had been heard from the Respondents and the Applicant wrote to them again at the military base she had an address for. In that letter she again raised the issue of the rent arrears but also stated:

"I presume from your phone call of 28/2/19 (sic), that you no longer wish to rent my property, so your tenancy will end March 28th,…".

There was no further discussion between the Applicant the Respondents.

The Applicant indicted that she sought rent arrears beyond this date (28th March 2018) and up to and including 30 June 2018. She explained that the reason for this was that she was unable to let the Property until that date due to the condition of it. This, she claimed, was as a result of the Respondents failing to complete the redecoration of the Property via Mr Gourlay. The Applicant confirmed that she had not inspected the Property prior to 30 March 2017 and had only seen the Property again in January 2018 whereby she noted that some of the rooms were in a poor decorative state in that wallpaper had been stripped but not replaced, carpets had been removed and some of the paintwork was a gloss black.

The Applicant indicated that she did not visit the Property again until late May 2018 whereby she noted works were still outstanding and that after that she instructed decorators to complete the works and that the Property was ready again to be let by 30 June 2018.

The Applicant's position was that the delay in re-letting the Property was as a result of the respondents' failure to complete the redecoration work they had started through Mr Gourlay and that they should therefore be liable for the rent until the Property was ready for re-let.

The Applicant also sought to claim under clause 5 of the lease electricity and gas consumed at the Property for the period 30 March 2017 through to 28 March 2018. Thereafter, she sought to recover the period 29 Mach to 30 June 2018 on the basis that she was unable to let the Property due to its condition and works were therefore required and the Property needed to be heated.

The amounts claimed changed from the sums sought at the CMD but were stated as £82.00 by way of electricity and £170.81 by way of gas. The Applicant referred to the letter from SSE dated 9 November 2018 to vouch the electricity claim and the final gas bill from SSE for the period 27 October 2017 to 11 June 2018 to vouch her claim for gas.

- Findings in Fact

1) That the Applicant and Respondents entered into a lease for the Property.
2) That the rent due under that lease was £400 per calendar month;
3) That the initial term of the said lease was 30 March 2017 to 29 September 2017;
4) That the lease continued under tacit relocation for a further period of 6 months;

5) That notwithstanding the lease continuing under tacit relocation, the Applicant accepted 1 month's verbal notice given by the Respondents on or around 28 February 2018 and that the contractual tenancy came to an end as at 28 March 2018;
6) That the rent arrears therefore due by the Respondents to the Applicant as at 28 March 2018 are £2,373 and remain outstanding;
7) That the Respondents never took occupation of the Property;
8) That the Property was not inspected by the Applicant before 30 march 2018 and not until the end of May 2018. As such no record of the condition of the Property as at 30 March 2017 or 28 March 2018 was made.

- Reasons for Decision

The Tribunal proceeded on the basis of the written documents that had been lodged as well as the oral testimony of the Respondent.

It was clear that the parties had entered into a lease for the Property that initial ran from 30 March 2017 until 29 September 2017. Although the respondents claimed to have contacted Mr Gourlay "After renting the property for almost 6 months...", no date was given for this notice being given and it is impossible for the Tribunal to therefore decide whether such notice (even if given) would have been timeous. Further, Mr Gourlay was not the agent of the Applicant; he was a tenant – like the Respondents. Indeed, even if notice had been given verbally direct to the Applicant by the Respondents, this would not have been effective notice to bring a lease to an end. Notice, of this type requires to be given in writing (section 112 of the Rent (Scotland) Act 1984). As such, the Tribunal was of the view that, even if this position was established, and it was denied by the Applicant, it would not have been sufficient to terminate the contractual tenancy as at 29 September 2017 in any event. As such, the lease would have continued under tacit relocation until 28 March 2018 in any event. That coincidentally is the date the Applicant agreed to accept notice to and thereby bringing the contractual tenancy to an end. As the number of days in March 2018 is only 28 days and not a full month the rent due for that period has been apportioned accordingly.

The Tribunal was not prepared to extend the period where the Respondents were liable for rent beyond the expiry of the contractual tenancy. Whilst the Applicant gave evidence to the effect that some work was required as a result of incomplete works instructed by the Respondents she was unable to say with any certainty what those were. In particular, she confirmed that she had not seen the Property before the Respondents tenancy commenced and had merely accepted the word of Mr Gourlay that the Property was in a "good condition" and had not seen it. Further, she did not inspect the Property until late May 2018 and that there was no written inventory of schedule of condition for either date. The Tribunal was therefore not in a position to make any finding in fact that the Property could not be re-let following the termination of the tenancy as a result of any breach of contract by the Respondents.

In relation to the claims for electricity and Gas consumed during the tenancy, the only documents before the Tribunal were the two SSE documents referred to above. Neither of these documents provided a breakdown of what element of the payments of bills related to the period of tenancy and as such the Tribunal was unable to

determine one way or the other whether any such utilities were consumed during the tenancy and how much. In the circumstances the Tribunal was therefore not in a position to make an award in favour of the Applicant.

- Decision

The Tribunal resolved to issue a Payment Order on favour of the Applicant against the Respondents in the sum of £2,373. The decision was unanimous.

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.

Rory Cowan

Legal Member/Chair 7th January 2019 **Date**