



**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/19/1594

Re: Property at 12 Johnston Court, Falkirk, FK2 7SZ (“the Property”)

Parties:

Mr Gary McGowan, 19 Waterfurs Drive, Falkirk, FK2 7GB (“the Applicant”)

Mr Chris McCarron, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Sarah O'Neill (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment by the respondent of the sum of £575 should be granted in favour of the applicant.

Background

1. An application was received on 24 May 2019 for a payment order brought in terms of rule 70 (Application for civil proceedings in relation to an assured tenancy under the Housing (Scotland) Act 1988) of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”).
2. The applicant was seeking payment of rent arrears of £1000 from the respondent in relation to the property, being the amount of arrears outstanding up until 31 May 2019.
3. The application included copies of the tenancy agreement and a rent statement showing the rent outstanding up until 31 May 2019.

4. The tribunal instructed sheriff officers to serve notice of a case management discussion (CMD) scheduled for 13 August 2019, together with the application papers and guidance notes, on the respondent at the forwarding address provided by the applicant's representative. The sheriff officers were unable to serve the papers on the respondent at that address. The CMD was therefore cancelled, and a new CMD arranged for 4 September 2019.
5. The papers for the rescheduled CMD were served by advertisement on the First-Tier Tribunal Housing and Property Chamber website. An email was sent to the respondent by the tribunal administration on 24 July 2019 at the email address provided by the applicant's representative in its application form, notifying him that the papers were being served by advertisement.
6. No written representations or time to pay application were received from the respondent prior to the CMD.

The Case Management Discussion

7. A CMD was held on 4 September 2019 at STEP Stirling, Stirling Enterprise Park, John Player Building, Stirling FK7 7RP. The applicant was represented by Miss Gillian Inglis, Lettings Assistant with Belvoir Falkirk, letting agent. The respondent was not present and was not represented.
8. The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a case management discussion had been duly complied with. The tribunal had before it a certificate of advertisement stating that service by advertisement on the respondent was carried out on the First-Tier Tribunal Housing and Property Chamber website between 24 July and 4 September 2019. The tribunal was satisfied that the respondent had been cited to attend the CMD by advertisement in terms of rule 6A of the 2017 rules, and had therefore been given lawful notice of the proceedings.
9. The tribunal delayed the start of the discussion by 10 minutes, in case the respondent had been detained. He did not appear, however, and no telephone calls or messages had been received from him. The tribunal therefore proceeded with the CMD in the absence of the respondent.
10. Miss Inglis on behalf of the applicant referred the tribunal to the rent statement dated 20 April 2019 which had been lodged in support of the application. She told the tribunal that the respondent had vacated the property on 6 June 2019. She confirmed that although some further rent arrears had accrued for the period between 1-6 June 2019, the applicant was seeking an order for the original sum stated in the application only i.e. the £1000 due up until 31 May 2019.

11. The tribunal chairperson noted that there was provision in clause 4 of the tenancy agreement for a deposit of £425 to be paid by the respondent to the applicant. She asked what had happened to the deposit money at the end of the tenancy. Miss Inglis confirmed that the deposit had been paid into an approved tenancy deposit scheme, following the introduction of the requirement to pay deposits into such a scheme in 2012. She said that the applicant had claimed the full deposit from the scheme at the end of the tenancy, which she believed was in respect of other costs related to the tenancy and incurred by him. She said that the full deposit had been awarded to the applicant, but she thought that all or some of this was in respect of costs other than rent arrears.
12. The chairperson asked to see evidence of this, and Miss Inglis telephoned her office, arranging for the relevant documentation to be emailed to the tribunal clerk. She produced the claim made by Belvoir to SafeDeposits Scotland Ltd on the applicant's behalf, seeking the return of the full deposit towards the rent arrears plus £200 in respect of cleaning. She also produced an updated rent statement, showing that in fact the full deposit amount had been credited towards the outstanding arrears on 2 August 2019. She agreed that therefore the amount of rent arrears outstanding was in fact £575 (i.e. the £1000 claimed minus the deposit of £425). She confirmed that she wished to seek on behalf of the applicant an order for this amount.

Findings in Fact

13. The tribunal made the following findings in fact:
 - The tribunal was satisfied that there was a valid short assured tenancy in place between the parties.
 - The applicant was the landlord in terms of the short assured tenancy agreement between the parties dated 1 February 2010. The title deed for the property showed that he owned the property jointly with Jane McGowan. The tribunal had received written confirmation from Mrs McGowan that she was content with the application proceeding in the applicant's sole name.
 - The rent due under the tenancy agreement, following an increase from 1 February 2019, was £440 per calendar month payable in advance.
 - As at 31 May 2019, the respondent owed the applicant the sum of £1000 in rental payments.
 - The full deposit of £425 paid by the respondent to the applicant had been returned to the applicant by the approved tenancy deposit scheme, and had been set against the outstanding rent arrears due by the respondent to the applicant.

Reasons for Decision

14. Having considered the terms of the short assured tenancy agreement and the rent statement provided with the application, the tribunal noted that this confirmed an outstanding balance of rent arrears up to and including 31 May 2019 in the sum of £1000. Having considered the updated rent statement and tenancy deposit scheme claim produced by the applicant's representative at the hearing, the tribunal was satisfied that the outstanding sum due by the respondent, in light of the deduction of the deposit sum, was £575. The tribunal therefore decided to make an order for payment by the respondent to the applicant of that sum.

Decision

The tribunal grants an order for payment by the respondent to the applicant for the sum of £575.

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.

S O'Neill

Legal Member/Chair

4/9/19

Date