

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 Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017

Chamber Ref: FTS/HPC/CV/18/0553

Re: Property at 14 Baliol Street, Kinghorn, KY3 9UT (“the Property”)

Parties:

Miss Alice Walker, Flat 3/2, 61 Trefoil Avenue, Glasgow, G41 3PB (“the Applicant”)

Mr Lance Wilson, 14 Baliol Street, Kinghorn, KY3 9UT (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and Angus Lamont (Ordinary Member)

Decision

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

- This matter called for a Hearing on 29 August 2018 at Fife Volunteer Centre, East Fergus Place, Kirkcaldy on 29 August 2018.
- A Hearing had been convened previously on 29 June 2018 in respect of this matter. That Hearing had been adjourned and continued to today’s date for the reasons set out in a decision issued to all parties following that Hearing. The substance of that decision had been delivered verbally at that Hearing on 29 June 2018 and then issued to all parties in writing. The same Tribunal members presided over that Hearing as were at today’s Hearing. The decision issued following that Hearing on 29 June was important as it specifically set out Directions to be followed prior to today’s Hearing. This decision today therefore must be considered with reference to that decision which set out those directions to be complied with. The Terms of the decision on 29 June 2018 were made verbally at that Hearing and set out in writing as the Tribunal wished to make the matters contained in that decision very clear to the parties.

- When the Hearing convened today the Applicant was present together with her representative, Ms Rowlinson of Jackson Boyd LLP. The Respondent was present. He had no representative.
- At the outset of the Hearing the parties were asked to confirm any preliminary matters. The Applicant wished to proceed with their Application and seek a payment order in the sum of £2,723.24 being the sum said to be the current amount of rent due. The Respondent wished to adjourn the Tribunal. The Respondent advised that he wished to adjourn the Tribunal for a number of reasons. After enquiry he confirmed that he wished to adjourn the Hearing to allow him to bring witnesses to the Tribunal to support a defence of rent being lawfully withheld on account of rent arrears. The Respondent indicated he wished to have Lesley Laird MP and two local councillors: Leslie Backhouse and Gordon Langlands as witnesses.
- The Tribunal noted that The Respondent had failed to comply with the Direction made by the Tribunal in the decision dated 29 June 2018. He specifically failed to provide written representations setting out in full his defence to the Application within 28 days of the date of that Hearing. The Respondent advised that notwithstanding this he wished to lodge evidence at today's hearing in support of a defence that rent was being lawfully withheld as a result of rent abatement.
- The Tribunal adjourned to consider whether the Respondent should be allowed to proceed with this defence and whether the Hearing should be adjourned to allow the Respondent to call the witnesses referred to. The Applicant opposed these requests.
- The Tribunal considered that the Directions made at the Hearing on 29 June 2018 were made abundantly clear at that Hearing both verbally and in the decision issued. The Tribunal considered that this direction was made precisely to avoid the situation where the Applicant would be faced with a defence of which they and the Tribunal had received zero prior notice. The Tribunal considered that in light of the clear terms of the previous decision the Applicant would be materially disadvantaged were the Respondent now to be allowed at the time of the Hearing to introduce a raft of issues regarding the supposed state of disrepair of the Property of which they had received no prior warning. The Tribunal therefore decided not to allow this defence to be entertained in light of the clear nature of the Direction given and the obvious reasons behind it.
- The Tribunal further considered the issue of the attendance of witnesses. The Tribunal noted that the Respondent had failed to comply with the clear terms of a Direction that had been delivered verbally and in writing that Parties would require to intimate in writing to the Tribunal seven days in advance of the Hearing the names and addresses of any witnesses which parties intended to call. The Respondent had failed to comply with this Direction. No reason of any substance was given as to why it had not been complied with. The Tribunal also noted that the nature of the public office held by the proposed witnesses made it apparent that careful arrangements would have been required to ensure their attendance and evidence provided of a willingness to attend on their part. The Tribunal also noted that these witnesses would have been called in supposed reliance of the defence of rent abatement which the Tribunal had decided not to entertain further.

Accordingly the Tribunal refused the request to adjourn the Hearing for the purposes of allowing the stated witnesses to attend.

- The Tribunal allowed an updated rent account to be received from the Applicant as this was relevant to the subject matter of the Hearing.
- The Tribunal heard evidence from the Applicant who confirmed that at today's Hearing the total figure of rent due was £2,723.24.
- The Respondent accepted that these figures were accurate but were only relevant to the amount of rent claimed to have been lawfully withheld. The Respondent confirmed that he agreed these figures under explanation that the lease itself was a forgery, the Applicant was breaking the law and the rent was lawfully retained. The Respondent also made vague references to cannabis plantations. Much of the Respondent's evidence was disjointed and difficult to follow and clearly fell to be determined as out with the scope of the Tribunal. The Tribunal gave the Respondent ample opportunities to cross examine the Applicant and also to articulate his views and give evidence on the issues raised.
- After hearing parties in full and having retired to consider its decision the Tribunal determined that at today's Hearing, the sum of £2,723.24 rent was lawfully outstanding.
- The Tribunal therefore made the Payment Order in the sum of £2,723.24.

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.

Andrew McLaughlin

Legal Member/Chair

— 29/8/18.
Date