



Notes on a Case Management Discussion 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/18/0454

Re: Property at 15 Bargeddie Street, Glasgow G33 1PA (“the Property”)

Parties:

Kenneth Smith, Hay Shed Bamflatt Farm, Strathaven ML10 6TA (“the Applicant”)

Martin Keen, 15 Bargeddie Street, Glasgow G33 1PA (“the Respondent”)

Tribunal Member:

David Bartos (Legal Member)

Summary of Discussion

The parties confirmed that the decision of the Tribunal ordering the Respondent to remove from the Property had not been appealed.

The parties made submissions on:

- 1) The level at which rent or violent profits should be calculated
- 2) Whether the Applicant should be allowed to withdraw the concession of the level of arrears which he made at the case management discussion of 5 July 2018 in order to make the arrears reflect a revised figure in (1) a spreadsheet that he had lodged with the Tribunal following the case management discussion of 8 October 2018 and (2) another spreadsheet that had been forwarded to the Tribunal on the morning of 4 December 2018 and not notified to the Respondent.
- 3) Whether the figures in the first spreadsheet were in dispute
- 4) Whether the Respondent had received a discretionary payment

- 5) Whether the Applicant was entitled to seek an order in excess of the amended sum sought in his application.

Findings in Fact

The following facts were agreed or not disputed between the parties:

1. The Respondent entered into a short assured tenancy with the Applicant dated 2 May 2012. The original rent under the tenancy was £ 535 per calendar month. From 10 May 2013 the tenancy relocated tacitly (automatically re-leased) on a month on month duration.
2. By February 2017 the parties had agreed that rent should be paid in the form of (A) £ 493.84 per four weeks payable in arrears plus (B) £ 15 per month payable in advance on the 10th day of each month. Combined these elements amount to a rent of £ 550 per month. This was paid by or on behalf of the Respondent until March 2017.
3. On 3 March 2017 and at the end of subsequent 4-weekly intervals until and including 19 January 2018 Glasgow City Council, on behalf of the Respondent did not pay the full £ 493.84 due on 3 March 2017 and thereafter at the end of each interval.
4. By 19 January 2018 the Respondent had paid only £ 9.80 of the £ 15 due on 10 January 2017. The Respondent has not paid the £ 15 due on 10th September, October, November, December 2017 and January 2018.
5. The tenancy came to an end on 9 February 2018. The Respondent's subsequent occupation of the Property has been without lawful right or title.
6. As at 9 February 2018 the arrears of rent amounted to £ 579.
7. On 20 February 2018 the Applicant applied to the Tribunal for an order for payment of rent arrears together with violent profits accruing to that date and future violent profits at the level of £ 550 per month being the level of rent of the terminated lease.
8. As at the case management discussion of 5 July 2018 the arrears of rent had been paid within payments of £ 217.32 on 16 March and £ 2167.74 on 29 June both 2018. Further unpaid violent profits (in the level of rent) had accrued totalling £ 946.42 as at that date.
9. On 6 July 2018 the Respondent, through Glasgow City Council paid £ 216.42 to the Applicant (designated as rent) in respect of the violent profits arising from the Respondent's occupation. This reduced the arrears of violent profits to £ 730.
10. At the case management discussion of 8 October 2018 the Tribunal ordered the removal of the Respondent from the Property.

11. Violent profits continued to arise after 5 July 2018 at the rate of £ 550 per month or £ 18.08 per day. Further payments of £ 432.84 were made by Glasgow City Council towards the violent profits on 3 and 31 August, 26 September and 26 October 2018.
12. At the case management discussion of 26 October 2018 the Tribunal allowed the Applicant to amend the sum sought to £ 987. As at that date the arrears of violent profits amounted to £ 987.
13. The Respondent has continued to occupy the Property. He is due to remove from it on Thursday 6 December 2018.

Reasons for Decision

The Applicant submitted that the rent of £ 550 per month had been agreed before any arrears had arisen in March 2017. The Respondent had paid the £ 15 per month element of that figure. The Council had paid the four-weekly figure of £ 493.84. While he had sent a text message asking for the rent increase to £ 550 per month, he had also reached a verbal agreement with the Respondent to increase the rent to that level.

The Respondent submitted that the rent had not been validly increased from £ 535 per month. He had received the text message asking for the increase but had responded asking for a written missive confirming the increase so he could pass this to the Council. He had never received it so that rent had not gone up validly. He accepted that he had paid the £ 15 per month element of the rent and that the Council had paid its four-weekly figure.

The Tribunal found that the payments made by the Respondent directly and on his behalf by the Council amounted to an acceptance by him of a rent of £ 550 per month. The lease, being for no more than one year did not require any missive.

The Tribunal drew the Applicant's attention to the claim in his spreadsheets that the arrears as at the case management discussion on 5 July 2018 were £ 946.42 when he had accepted at that discussion that the arrears to that date were only £ 810.46.

The Applicant had been unaware of the discrepancy and sought permission of the Tribunal to withdraw that concession and to maintain the arrears at the higher level in the spreadsheets. The Respondent had no opposition to the figure of £ 946.42 at 5 July and £ 730 at 9 July 2018 (on the basis that the rent had been £ 550 per month).

The Tribunal that as at the case management discussion of 5 July the Tribunal had continued the case in order to allow for the Respondent to make payment and no payment had been made fully clearing the arrears at the £ 810.46 level and disposing of the case, no prejudice would be suffered by the Respondent in allowing the concession to be withdrawn. It allowed the concession to be withdrawn.

The Respondent conceded that he had no criticism of the figures of payments due and received and cumulative arrears in the first spreadsheet. His application for a discretionary payment had not yet been dealt with by the Council.

The Tribunal found that there being no dispute between the parties as to the figures in the first spreadsheet covering occupation until 26 October 2018, the Respondent was liable to pay the Applicant the sum of £ 987 as set out in that spreadsheet. This accorded with the sum sought by the Applicant in the application as amended by the Tribunal in the case management discussion of 26 October 2018.

The Applicant sought to persuade the Tribunal to order the Respondent to pay a higher figure of £ 1218 to reflect violent profits for occupation since 26 October. He appeared to suggest that he had not sought the amendment recorded by the Tribunal on 26 October. However no indication of any challenge to the accuracy of the note of the discussion of 26 October had been given before the current case management discussion despite the note of the discussion of 26 October 2018 having been sent to the Applicant by recorded delivery on 5 November 2018.

Neither before the current case management discussion nor at the discussion itself did the Applicant seek to amend his application further to increase the sum of £ 987 to a higher figure. The higher figure had not been disclosed to the Tribunal member until the morning of the discussion and had not been notified to the Respondent at all.

The Tribunal is not in a position to award a sum larger than that sought in the application. Nor is it in the Tribunal's power to award sums in advance of them becoming due. In these circumstances it was not persuaded by this submission of the Applicant and did not base its decision on the subsequent spreadsheet.

Outcome

The First-tier Tribunal for Scotland (Housing and Property Chamber) orders the Respondent to pay to the Applicant the sum of NINE HUNDRED AND EIGHTY-SEVEN POUNDS (£ 987.00) STERLING.

Right of Appeal

In terms of section 46 of the Tribunals (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.

David Bartos

Legal Member

Date 4 December 2018