

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) in respect of an application under Section 16 of the Housing (Scotland) Act 2014 (“the Act”) and Rule 70 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/CV/21/1950

Re: Property at 5/4 Colquhoun Square, Helensburgh, G84 8AS (“the Property”)

Parties:

Mrs Margaret MacDougall, The Caravan, Tigh Lasgair, Moss Road, By Cardross, G82 5HG (“the Applicant”) per her agents Bannatyne, Kirkwood France & Co., Exchange House, 16 Royal Exchange Square, Glasgow, G1 3AG (“the Applicant’s Agents”)

Ms Elizabeth Dickson, 5/4 Colquhoun Square, Helensburgh, G84 8AS (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for payment of SEVEN THOUSAND FIVE HUNDRED AND FIFTY FOUR POUNDS AND FIFTEEN PENCE STERLING (£7,554.15) be granted.

Background

1. By application received between 13 August 2021 and 12 October 2021 (“the Application”), the Applicant’s agents applied to the Tribunal for an Order for payment of rent arrears of £5,381.78 arising from a tenancy between the Parties. The Application comprised a copy tenancy agreement at a monthly rent of £650.00 between the Parties and a statement of rent due and owing. The Application was accepted by the Tribunal and a Case Management Discussion (the “CMD”) was fixed for 18 January 2022 at 10.00 by telephone conference. Prior to the CMD, the Applicant’s Agents amended the sum sought to £8,631.78, which amendment was accepted by the Tribunal.

2. The CMD took place on 18 January 2022. The Applicant did not take part and was represented by Ms. Alexandra Woolley of the Applicant's Agents. The Respondent took part on her own behalf. On behalf of the Applicant, Ms. Woolley confirmed that the amended sum was sought. The Respondent stated that she disputed the sum sought and stated that she had made payments not shown on the statement which forms part of the Application. She stated that there were no arrears in 2019 and accepted that there are arrears but not to the extent of the sum sought.
3. The CMD was adjourned to a Hearing and the Tribunal issued a Direction in respect of the evidence required at the Hearing. The Applicant complied with the Direction in full. The Respondent complied with the Direction by submitting an email explaining her position.

Hearing

4. The Hearing took place on 25 March 2022 at 10.00 am by telephone conference. The Applicant did not take part and was again represented by Ms. Woolley of the Applicant's Agents. The Respondent took part on her own behalf. On behalf of the Applicant, Ms. Woolley advised that an amended sum of £7,554.15 was sought, under explanation that a housing benefit payment was due to be credited the Applicant's bank account.
5. Ms. Wooley led evidence from Ms. Amy Whyte, the Applicant's granddaughter, who advised the Tribunal that she acted on the Applicant's behalf in respect of the Property. With reference to the productions lodged on behalf of the Applicant, Ms. Whyte gave evidence of the payments made both by the Respondent herself and on her behalf by Argyll and Bute Council by way of housing benefit. Ms. Whyte's evidence confirmed the sum sought by the Applicant as £7,554.15 and confirmed that rent arrears began accruing in May 2019, with no payments being made by the Respondent herself since February 2021, after which time housing benefit has been received.
6. In cross-examination by the Respondent, Ms. Whyte did not accept that payments made by the Respondent in 2019 had not been credited to the rent account.
7. The Respondent gave evidence on her own behalf and stated that she had made payments by bank transfer and, in June and October 2019, had made at least two payments by depositing cash into the Applicant's bank account and that it is these payments which are not showing on the statements lodged on behalf of the Applicant. The Respondent accepted that rent is underpaid and outstanding from January 2020 onwards. She did not accept that the rent due as at December 2019 is £1,135.00 as shown on the statements lodged on behalf of the Applicant.
8. In cross-examination by Ms. Wooley and in response to questions from the Tribunal, the Respondent accepted that she did not have proof of payment of the sums she had paid by depositing cash into the Applicant's bank account and accepted that she had not contacted the bank to confirm the payments. She was not able to explain why the cash payments she said she had made do not show on the Applicant's bank statements although all other payments are recorded, including the housing benefit payments. The Respondent confirmed that she does not oppose or contest the sums sought after the end of 2019.

Findings in Fact

9. From the Hearing, the Tribunal accepted the evidence of Ms. Whyte in its entirety. The Tribunal accepted that the evidence given by the Respondent was given to the

best of her ability and recollection but that it could not overcome the factual evidence of Ms Whyte and so preferred Ms. Whyte's narration of the facts.

10. From the Application, the documents lodged and the Hearing, the Tribunal made the following findings in fact:-

- i) There is a short assured tenancy between the Parties at a monthly rent of £650.00;
- ii) Rent arrears began accruing in May 2019;
- iii) The Respondent has not paid rent to the Applicant since February 2021;
- iv) The Respondent has been in receipt of housing benefit which has been paid to the Applicant since March 2021;
- v) The said housing benefit does not meet the full cost of the rent and so rent arrears continue to accrue;
- vi) All housing benefit paid to the Applicant has been credited to the rent account;
- vii) The rent statement lodged on behalf of the Applicant is accurate and correct in that it shows the rent outstanding and owing by the Respondent as £8,027.93 at March 2022;
- viii) A further £473.38 in housing benefit falls due to be credited to the rent account;
- ix) The amount of rent due and owing by the Respondent to the Applicant is £7,554.15.

Decision and Reasons for Decision

11. The Tribunal, having found in fact that the rent amounting to £7,554.15 is due and owing by the Respondent to the Applicant determined to grant an Order for payment in this sum and advised the Parties accordingly.

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.

 **Karen Moore**

25 March 2022

Legal Member/Chair

Date