



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/22/3499

Re: Property at 49 Durar Drive, Edinburgh, EH4 7HW (“the Property”)

Parties:

Mr Lendrick Gillies, Flat 1, 58 Palmerston Place, Edinburgh, EH12 5AY (“the Applicant”)

Ms Kelly Marjoribanks, 4/6 Greenacre, Edinburgh, EH14 3JG (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mrs H Barclay (Ordinary 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 should be granted in favour of the Applicant in the sum of £20,156.14 with interest thereon at the rate of 8% per annum.

Background

1. By application received on 26th September 2022 and made under Rule 70 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Rules”), the Applicant applied for an order for payment in the sum of £13,506.14 with contractual interest thereon at the rate of 8%. The Applicant’s representative lodged a rent statement and a short assured tenancy agreement between the parties commencing on 21st November 2017.
2. By email dated 13th January 2023, the Applicant’s representative made an application to amend the sum sought to £19,206.04.
3. A Case Management Discussion (“CMD”) took place by telephone conference on 27th January 2023. The CMD was continued to allow notification of the application to amend to be made upon the Respondent, who was not present.

4. An application to increase the sum sought to £20,156.14 was submitted by the Applicant representative by email dated 9th February 2023, enclosing copy notification to the Respondent sent by Recorded Delivery on 2nd February 2023.
5. A CMD took place by telephone conference on 23rd February 2023. The Respondent was in attendance and put forward a defence of withholding rent due to repair issues. The Respondent claimed to have evidence to support her defence. The case was continued to a hearing.
6. The Tribunal issued a Direction to the Respondent, ordering her to lodge a written note of defence setting out in full her defence to the application, indicating whether she has exercised only the remedy of retention of rent, or whether she is seeking any other remedies.
7. The Respondent did not comply with the Direction of the Tribunal.
8. The case called for a hearing by telephone conference on 15th May 2023. The Applicant was not in attendance and was represented by Mr David Gray, Solicitor. The Respondent was in attendance. The Respondent said she had not received the Direction or Case Management Discussion note dated 23rd February 2023, stating that she had moved address at the end of February. The tenancy ended on 31st March 2023. The Tribunal Clerk checked the system and found that the documents had been issued by email to the Respondent on 2nd March 2023. The Respondent said she had not received them, although she confirmed that the email address used was correct.
9. The Tribunal decided to adjourn the hearing to another date, given that the Respondent claimed not to have received the documentation. The Tribunal informed the Respondent that she must contact the Housing and Property Chamber immediately to advise them of her new address, in order that all documentation could be sent by Recorded Delivery and ordinary post. The Respondent was informed to contact the Chamber administration if she had not received the documentation within 7 days. A further Direction was made in the same terms as the previous Direction. The Respondent was advised to take advice from a suitable housing agency, law centre or solicitor to assist her in forming her defence, and to provide representation for the hearing, if at all possible.
10. The Respondent did not contact the Chamber administration to provide her address.
11. The Respondent did not comply with the Direction of the Tribunal.
12. Notification of a hearing set down for 31st July 2023 was made upon the parties by email on 16th June 2023.

The Hearing

13. A hearing took place by telephone conference on 31st July 2023. The Applicant was not in attendance and was represented by Mr David Gray, Solicitor. The Respondent was not in attendance.
14. The Tribunal considered the terms of Rule 29. The Tribunal determined that the requirements of Rule 24(1) had been satisfied, and it was appropriate to proceed with the application in the absence of the Respondent.
15. Mr Gray made a motion for an order in the sum of £20,156.14 with interest thereon at the rate of 8% per annum, in accordance with clause 3 of the tenancy agreement. Responding to questions from the Tribunal regarding the alleged repairs, Mr Gray said repairs had been carried out to the roof just before the Respondent terminated the tenancy. The repairs had taken some time to complete due to unavailability of contractors. The non-payment of rent had not helped the situation.

Findings in Fact and Law

16.
 - (i) Parties entered into an assured tenancy that commenced on 21st November 2017 with rent due in the sum of £950 per month.
 - (ii) The tenancy ended on or around 31st March 2023.
 - (iii) Rent lawfully due in terms of the tenancy agreement has not been paid by the Respondent.
 - (iv) The Applicant is entitled to recover rent lawfully due.

Reasons for Decision

17. The Respondent has failed to make payment of rent lawfully due. The Applicant is entitled to recover rent lawfully due in terms of the tenancy agreement between the parties.

Decision

18. An order for payment is granted in favour of the Applicant in the sum of £20,156.14 with interest thereon at the rate of 8% per annum.

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.

Helen Forbes

Legal Member/Chair

31st July 2023
Date