



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/22/2810

Re: Property at 46 Kirkconnel Terrace, Dundee, DD4 0JF (“the Property”)

Parties:

Mr Gary MacDonald, Ms Jane MacDonald, Milton of Carmyllie, Bungalow, Carmyllie by Arbroath, DD11 2QS; 42 Ethie Terrace, Arbroath, DD11 4AB (“the Applicant”)

Ms Danielle Shirkey, 46 Kirkconnel Terrace, Dundee, DD4 0JF (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Jane Heppenstall (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 of £4000 be made in favour of the Applicant from the Respondent.

- **Background**

1. This was the second case management discussion to consider the application made by the Applicants dated 11th August 2022 for an order for payment of rent arrears in respect of the tenancy of the Property by the Respondent from the Applicants in terms of Rule 70 of the Tribunal Rules. The CMD took place by teleconference.
2. This application is conjoined with an application for eviction.
3. The Applicant is the Landlord in a Short Assured Tenancy with the Respondent who is the tenant. The Applicant has title and interest by virtue of owning the property.
4. The Applicant had lodged and the Tribunal had sight and considered the following documents:-
 - a. Application for payment of rent arrears dated 11th August 2022

- b. Copy Tenancy Agreement for the Property commencing 1st September 2017 and ending 2nd March 2018
 - c. Rent statement showing sum of £12800.02 due as of 20th July 2007.
5. The first teleconference was held on 31st January 2023 and only the Applicant's representative Mr Jay Lawson attended. The Respondent did not attend nor was she represented on that date but she had been served a copy of the application and the accompanying papers by sheriff officer on 1st December 2022 and indicated in an e-mail to the Tribunal on 17th January that she had child care issues for her youngest daughter that she had no luck in finding a solicitor to represent her but that she did not want a delay in the process.
6. The Respondent has made several submissions in writing dated from 15th December 2022 to 20th February 2023. The Respondent advised that while she agreed she had some rent arrears at the property, there were other sums not shown on the applicant's rent statement at least £4600. She advised that she believed universal credit had been paid directly to the landlord and had not been accounted for on their rent statement. She also submitted there were a number of issues with the condition of the house in particular issues with the roof leaking and a draughty window which had been outstanding for months. She also advised that she had 3 children, that she had experienced a significant bereavement and had caused her anxiety and depression. The Applicant lodged on 17th January 2023 an application to amend the sum sought to £10,797.05, following submissions relating to the Respondent's email in December 2022 and an updated rent statement and pictures of the garden. The Applicants submissions went on to state that the applicants accept there is an issue with the roof but this cannot be resolved until the garden is tidied up and this is the Respondents responsibility.
7. At the CMD Mr Lawson indicated that his clients had only found 4 more rent payments which were not in the original statement and that was now shown in the rent statement lodged for £10,797.05. He went on to confirm that in order to settle this claim his clients were prepared to accept the sum of £8200 being the original amount sought less the £4600 the Respondent claimed was paid and not shown on the rent statement.
8. The Tribunal agreed that the case should be continued to clarify the Respondent's views on whether she was objecting to an order for eviction. The Tribunal issued a direction to this effect.
9. The Respondent then lodged an e-mail dated 20th February confirming that "I am not objecting to the eviction only the rent arrears. I am in full agreement with the eviction as this house and the issues within it have caused my mental health to worsen over the years. ..." The Respondent went on to confirm *"I have given evidence of the rent from a government body with dates that have been paid to the landlord. The landlord along with his solicitor have offered a settlement of £8,200.02. I have asked for this to be re-evaluated due to the conditions myself and my children have had to live under. Due to the window unable to lock and a hole leading to the loft, I have had to constantly top up my gas to ensure my children are warm. Three years with a window that does not lock in all weather conditions has caused me a lot of money. I have asked numerous times for this to be resolved, with no luck. I would*

appreciate for the rent arrears to be dropped to £4000 with a payment plan set up if the landlord can accept this. This is due to going through around £8/9 a day on gas, more during the winter to keep upstairs warm. This is also to include the mental stress I've been made to put under due to the ongoing issues being unresolved within the house. The house is constantly cold, and my youngest is constantly unwell. Along with the hole in the living room, and the leaks, my mental well-being has been effected. I am already paying back arrears, but I can pay another £20 to make this £50 a month. I am a student and have no other income.

10. The Applicants then lodged in an e-mail from their solicitor further written submissions confirming that in order to settle the rent arrears the landlords were prepared to accept an order for £4,000.

The Discussion

11. The Legal Member explained the purpose and order of the proceedings today and invited the Applicant's solicitor to explain what they were seeking and why.
12. Mr Lawson confirmed that he was seeking an order for eviction and order for payment of rent arrears. With regard to the rent arrears he confirmed that although his clients believe the rent arrears are more than £10,000, as per their last statement, his clients had instructed him to advise that if it allows matters to reach a conclusion, that they would be prepared to accept an order for the sum suggested by the Respondent in her e-mail of 20th February namely £4,000. He also submitted that as the Respondent was agreeing to the order for eviction, and that there are substantial rent arrears granting an order for eviction today would be reasonable.
13. Mr Lawson confirmed that although his clients, the Applicants do not agree that only £4,000 is due and owing they wish to resolve this dispute and so would accept an order for only £4,000 as suggested by the Respondent. He confirmed that rent is currently being paid by housing benefit and in addition £33.49 is being paid towards the arrears.
14. Mr Lawson under questions confirmed that although his clients would be prepared to accept the Respondent's offer to pay arrears at the rate of £50 per month as this has not been made in a written offer of time to pay he was not sure the Tribunal could grant such an order and in the absence of that he was seeking an order for £4,000 today as well as an order for eviction.
15. The parties in their written submissions both agree repair work to the roof is required although the Applicant's position is it cannot be carried out until the garden is cleared and the Respondent's position is that the garden is now clear.

Findings in Fact

1. The Applicant and Respondent entered into a short assured tenancy of the Property for a period of 6 months from 1st September 2017 to 2nd March 2018
2. The Applicant is the Landlords.
3. The Rent due in terms of the lease is £575.

4. The Tenancy is a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988.
5. The Respondent is in arrears of rent.
6. The exact amount of arrears is in dispute but at least £4000 is due and owing.
7. Repair work to the roof is required to be carried out to the property.

Reasons

1. The parties have entered into a lease where the Respondent has leased the property from the Applicant and has agreed to pay £575 per month in rent.
2. The Respondent has failed to pay the full rent due. The Applicant after checking payments submitted a revised rent statement and confirmed the arrears are £10797.05. The Respondent disputed that in writing claiming the arrears were around £8,200.02 however she also submitted that the Property was in poor condition and asked for the rent arrears to be “dropped to £4000.” Although the Respondent has not appeared in person she has engaged with the process in writing.
3. The Respondent has admitted there are rent arrears and the Applicant has advised that some payment towards the arrears are being made.
4. As the Applicant has today agreed that they would accept an order for £4000 and the Respondent has indicated that the arrears may be more than that but due to the state of the Property she wished them dropped to £4,000 the Tribunal considers that there is no dispute now between the parties and so it would be reasonable to grant an order for that sum.
5. As there is no application for time to pay the Tribunal is not able to make an order for payment in instalments but notes that the Applicant is willing to accept payment at £50 per month and so the parties are free to come to an informal arrangement for payment in instalments.
6. If the Respondent wishes to make an application for time to pay she may do so using the form she will find on the Tribunal’s website and after it is appropriate to do so which will be after diligence has commenced. There is further information on the tribunal’s website or the Respondent may seek her own legal advice on this.

• Decision

An order for payment of the sum of £4000 is granted.

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.

Jan Todd

Legal Member/Chair

Date 9th May 2023