



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/20/0921

Re: Property at 20 Earn Gardens, Larkhall, ML9 1QG (“the Property”)

Parties:

James Doherty, 6 Bairds Crescent, Allanshaw Industrial Estate, Hamilton, ML3 9FD (“the Applicant”)

Thomas Crawford Junior, 11 Langloan Street, Coatbridge, ML5 1HH (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent(s) for payment of the undernoted sum to the Applicant(s):

Sum of THREE THOUSAND ONE HUNDRED AND SEVENTEEN POUNDS (£3,117) STERLING

- Background
 1. An application dated 11 March 2020 was submitted to the Tribunal under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking a payment order against the Respondent in relation to rent arrears and damages costs accrued under a short assured tenancy agreement.
- The Case Management Discussion
 2. A Case Management Discussion took place on 12 August 2020 by tele-conference. The Applicant was personally present. There was no appearance

by or on behalf of the Respondent. The application had been intimated on the Respondent by Sheriff Officer on 14 July 2020. The Tribunal was accordingly satisfied that the Respondent had been duly notified of the date and time of the CMD and that the CMD could proceed in the Respondent's absence.

3. The following documents were lodged with the application:
 - (i) Summary of Claim comprising invoice of works and rent arrears figure
 - (ii) Deed of guarantee
 - (iii) Schedule of Condition
 - (iv) Form AT5 and Tenancy Agreement

4. The Applicant moved for the order for payment to be granted as sought. The parties had entered into a Short Assured Tenancy Agreement with Ms Margaret Thomson ("the Tenant") which commenced 8 February 2012. The Respondent signed a Deed of Guarantee dated 8 February 2012 in terms of which he agreed to compensate fully and indemnify the Applicant for any loss, damage costs or other expenses arising either directly or indirectly from the breach by the Tenant of her obligations under the said tenancy agreement. At the termination of the tenancy, the Tenant had caused damage to the property which caused a loss to the Applicant of £3415. Said damage costs included a damaged cooker which required to be replaced, replacement of damaged worktop and sink, redecoration works, cleaning and hire of a skip. Further, arrears of rent of £550 fell due. A deposit of £450 held with My Deposits Scotland had been returned to the Applicant. The Respondent had paid £398 towards said sums due but no further sums had been paid nor offered. The remaining sum due to be paid was £3117.

5. The Respondent submitted an "Application for Time to Pay Direction" form dated 14 July 2020. However, in said form he did not make an offer of instalment payments and instead scored out certain sections of the form and wrote *"I do not admit any liability. Prescription and Limitation Act Section 6. I want to see his tax records in regards to rent been paid. Full five years regards to all outgoing invoices as per Article 6 of Human Rights Act and lease with my signature as guarantor."* The Respondent did not participate in the CMD to put forward any defence to the application or clarify any of the remarks submitted in said form.
 - Findings in Fact

6. The Tribunal made the following findings in fact:
 - (i) The Applicant entered into a Short Assured Tenancy Agreement ("the Agreement") with the Tenant which commenced 8 February 2012;
 - (ii) The Respondent entered into a Deed of Guarantee relating to said Agreement dated 8 February 2012;
 - (iii) The Landlord has incurred financial losses amounting to £3117 due to the Tenant's failure to abide by the terms of the Agreement.
 - (iv) The Respondent is jointly and severally liable with the Tenant for losses arising from the tenancy agreement.

- Reasons for Decision

7. The Tribunal was satisfied that the Applicant was entitled to the sum as sought. The Respondent was obliged under the terms of the Deed of Guarantee to compensate fully and indemnify the Applicant for any loss, damage costs or other expenses arising either directly or indirectly from the breach by the Tenant of her obligations under the said tenancy agreement. In terms of the said tenancy agreement, under Clause 3(a) of the Agreement the Tenant agreed to keep both the house and garden clean and tidy; under Clause 3(e) of the Agreement the Tenant agreed not to alter, decorate, paint, mark or cut any part of the property; under Clause 5(c) of the Agreement the Tenant agreed to pay all direct or indirect costs relating to the making good of any loss of keys, damage or defects caused by the tenant. Due to the damage caused by the tenant at the end of the Agreement, the Applicant incurred a loss of £3117 which the Guarantor is jointly and severally liable for in terms of the Deed of Guarantee entered into.
8. The Tribunal considered the remarks made by the Respondent in the form he had lodged as a response to service of the papers. The Tribunal was satisfied that the debt, which fell due in 2018, had not prescribed in terms of the 5 year prescriptive period under section 6 of the Prescription and Limitation (Scotland) Act 1973. The Tribunal did not consider that the issue of the Applicant's tax records had any relevance to the application. It was noted that the Respondent failed to participate in the CMD to put forward any defence to the application.
9. Accordingly, the Applicant was entitled to the Order for Payment as sought.

- Decision

10. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent(s) for payment of the undernoted sum to the Applicant(s):

Sum of THREE THOUSAND ONE HUNDRED AND SEVENTEEN POUNDS
(£3,117) STERLING

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.

Fiona Watson

Legal Member/Chair

12 August 2020

Date