



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/CV/19/3111

Property: Little Cutstraw Farmhouse, Stewarton, KA3 5JE

Parties:

Cabin Developments Ltd, 8 Fifth Avenue, Glasgow, G12 0AT (“the Applicant”)

Ian Borrett, residing at Little Cutstraw Farmhouse, Stewarton, KA3 5JE (“the Respondent”)

Tribunal Members:

Paul Doyle (Legal Member)

Leslie Forrest (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be made.

Background

1. The Applicant initially sought an order for payment of rental arrears totalling £3,486.39. The Applicant had lodged with the Tribunal Form F. The documents produced were a Tenancy Agreement and a schedule of rent arrears. A copy title sheet was lodged with the Tribunal which showed that the applicant is the heritable proprietor of the Property.

2. An evidential hearing took place before the Tribunal by telephone conference at 10.00am on 3 August 2020. The Applicants were represented by Harper MacLeod LLP. The respondent was present but was not represented. He had previously been represented by solicitors who withdrew from acting on 29 July 2020. After that hearing the tribunal made some findings in fact but continued the case to a further evidential hearing so that discrepancies in the calculation of arrears of rental could be addressed.

3. A further evidential hearing took place before the Tribunal by telephone conference at 10.00am on 14 September 2020. The Applicants were represented by Harper MacLeod LLP. The respondent was neither present nor represented. On 11 September 2020 the applicant asked for a postponement saying that he had instructed solicitors and had the benefit of legal aid. That application was refused because of the procedural history of this case and because it came one business day before a continued evidential hearing. Even though the respondent is now represented, neither he nor his solicitor participated in this continued hearing. We remind ourselves of regulation 2 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

4. The applicant asks to amend the sum applied for to £7,115.30 in terms of s13 of the 2017 Procedure Rules. That application is not opposed. The sum applied for is amended so that this is now an application for a payment order in the sum of £7,115.30.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a Short-Assured Tenancy Agreement for the Property dated 22 February 2011.

2. The period of the Lease was from 1 March 2011 to 31 August 2011 and thereafter on a month to month basis. The rent in terms of the Tenancy Agreement was £400 per month.

3. The Tenancy Agreement set out the grounds on which the Landlord could seek recovery of possession of the Property in terms of Schedule 5 of the 1988 Act.

4. A Form AT6, a notice to quit and a s.33 notice were served on the Respondent on 28 June 2019. The tenancy is a short-assured tenancy and the respondent received the notice to quit, the s.33 notice and the form AT6 timeously. The Applicant raised a separate application for eviction relying on s.33 of the Housing (Scotland) Act 1988. An order for repossession of the property was granted in that application on 3 August 2020.

5. Between 1 January 2018 and 1 January 2020 the respondent allowed rent arrears to accumulate by paying less than the agreed rental each month. By 1 July 2019 there were rent arrears totalling £2,007.04. The respondent has not paid any rental since 1 August 2019.

6. The applicant relies on a schedule of unpaid rent, according to which there are rent arrears totalling £7,115.30. The schedule of unpaid rental is supported by bank statements. Considering the totality of documentary evidence, we are not satisfied

that the applicant's calculation is entirely accurate. Having considered the bank statements we find that the applicant establishes that rental arrears total at least £6,000, however we are not persuaded that the total arrears exceed that sum.

7. Even though the statement of arrears of rent relied on by the applicant is not perfect, there is sufficient reliable evidence to support an application for a payment order in the sum of £6,000.00

Reasons for the Decision

The Tribunal determined to make an Order for payment of £6,000. Rent was lawfully due in terms of the Tenancy Agreement entered into by the parties at the rate of £400 per month. Since March 2017 the respondent has consistently paid less than the agreed monthly rental. Since August 2019 the respondent has not paid any rental. By August 2020 the respondent owed the applicant £6,000.00 in arrears of rental.

Decision

For the foregoing reasons, the Tribunal determined to make an Order for payment.

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.

Paul Doyle

Legal Member

Date 14 September 2020