



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/20/0206

Re: Property at 200B Montrose Street, Brechin, DD9 7DZ (“the Property”)

Parties:

Mr Barry Dunlop, Collierhall Farm, Douglas Water, Lanark, ML11 9TU (“the Applicant”)

Mr Paul Gerrard, 200B Montrose Street, Brechin, DD9 7DZ (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that that an order for payment of the sum of £4,679.32 should be granted in favour of the Applicant.

Procedural Background:

Background:

1. The application was made on 22 January 2020. The application asked for an order for payment of £4,679.32 rent arrears.

2. Attached to the application were:

1. the Tenancy Agreement for the property commencing 7 November 2014
2. Copy Rent Statement up to and including 22 January 2020, showing the last change on 7 January 2020.

3. A Case Management Discussion (CMD) was scheduled for 2 April 2020. Due to the Covid -19 lockdown restrictions the CMD was postponed. On 15 June 2020 the Respondent was notified of the new date of the CMD by recorded delivery letter in terms of Rules 6 (1) (a) (ii) and 17 (2) of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (the Procedural Rules). The

Respondent was advised the CMD would take place on 15 July 2020 at 10:00 hours by telephone conference. In terms of Rule 17 (1) (a) of the Procedural Rules a CMD may be held by conference call. He was provided with the required information to participate in the CMD.

4. The Tribunal thus considers that the appropriate notice has been given to the Respondent.

5. No representations were received from the Respondent. The Respondents had not contacted the Tribunal prior to the CMD. The Tribunal started the CMD at 10:10 hours having given the Respondent a further 10 minutes time to join the conference call. The Respondent did not participate in the conference.

The Case Management Discussion

6. The Applicant's representative Mrs Davie from Direct Lettings participated on behalf of the Applicant. She stated that after the first eviction action had been rejected in September 2019 due to a problem with the ish date in the Notice, further efforts had been made to engage with the Respondent. He had promised payments but these had not been forthcoming. There had been no recent contact from the Respondent and no payments had been received since the application was made. She advised the arrears of rent now stand at £7,200. She referred the Tribunal to the documents lodged with the application, which are referred to for their terms and held to be incorporated herein. There were no representations from the Respondent.

7. Findings in Fact:

- I. The parties entered into an Assured Tenancy for the property with a start date of 7 November 2014 (clause 1).**
- II. Rent of £430 per month is payable monthly in advance (Clause 2)**
- III. The outstanding amount of unpaid rent as of 7 January 2020 is £4,679.32.**
- IV. No further payments have been received.**

Reasons for the Decision:

8. The Tribunal make the decision on the basis of the written evidence lodged by the Applicant and the information given at the hearing by the Applicant's representative.

In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

- (b) identifying what facts are agreed between the parties;
 - (c) raising with parties any issues it requires to be addressed;
 - (d) discussing what witnesses, documents and other evidence will be required;
 - (e) discussing whether or not a hearing is required; and
 - (f) discussing an application to recall a decision.
- (4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

9. However, in terms of Rule 18 of the Rules of Procedure:

- 18.—(1) Subject to paragraph (2), the First-tier Tribunal—
- (a) may make a decision without a hearing if the First-tier Tribunal considers that—
 - (i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and
 - (ii) to do so will not be contrary to the interests of the parties; and
 - (b) must make a decision without a hearing where the decision relates to—
 - (i) correcting; or
 - (ii) reviewing on a point of law,a decision made by the First-tier Tribunal.
- (2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

20. The Respondent did not make any written representations and did not participate in the CMD. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case.

21. The Applicant is seeking an order for payment of rent arrears for the property for the period up to and including 7 January 2020. The Tribunal cannot grant an order for any further sums outstanding as no motion in terms of Rules 13 and 14A of the Procedure Rules had been made to amend the application to show the up to date arrears prior to the CMD and the Respondent had not been given fair notice of an increase of the amount prior to the CMD.

22. There was no defence to the action. In terms of the tenancy agreement the Applicant is entitled to monthly rental payments of £430. The rent statement shows that as at 7 January 2020 rent is in arrears to an amount of £4,679.32. This is not disputed by the Respondent. These are the arrears intimated and stated in the application.

Decision

23. The Tribunal grants an order against the Respondent for payment of the sum of £4,679.32 to the Applicant constituting arrears of rent for the property up to and including 7 January 2020.

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.

Petra Hennig McFatrige

**Petra Hennig McFatrige
Legal Member**

**15 July 2020
Date**