

Housing and Property Chamber
First-tier Tribunal for Scotland



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 and Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules")
Chamber Ref: FTS/HPC/CV/18/0418

Re: Property at No 6 Smyrton Hill, Glenapp Estate, Ballantrae, Girvan, South Ayrshire KA26 0NY ("the Property")

Parties:

Glenapp Estate Co Ltd, Glenapp Estate Office, Ballantrae, Girvan K26 0NY ("the Applicant")

Karen McGillivray, 10 Barrhill Road, Penwherry, Girvan, KA26 0QE ("the Respondent")

Tribunal Members:

Mary-Claire Kelly (Legal 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 £3,000 plus interest at the rate of 2.5% thereon be granted.

Background

1. By application dated 13th February 2018, the Applicant applied to the Tribunal for an Order for Payment in respect of rent arrears of £2,400 due by the Respondent. The Applicant also sought payment of £504 in respect of unpaid heating costs.
2. A tenancy agreement signed by the parties was lodged with the application. The tenancy agreement commenced on 30th April 2012. The rent payable in terms of the agreement was £400 per calendar month.

3. Case Management Discussions ("CMD's") were held on 3rd May 2018 and 6th July 2018. At the CMD on 6th July the parties had agreed that the rent outstanding at that date was £3200 and the amount being sought in respect of rent arrears was amended to that amount. It was also determined that the contract in respect of the heating was separate from the tenancy agreement and did not fall within the jurisdiction of the Tribunal. Accordingly the CMD on 10th September 2018 was only concerned with the issue of rent arrears.
4. The CMD on 6th July had been adjourned to allow the parties to clarify the amount paid by the Respondent at the commencement of the tenancy as her position had been that she had paid two months rent in advance. The case had also been adjourned to allow the Respondent to make payments of £100 per week towards the arrears.

Case Management Discussion

5. The CMD took place at 10am on 10th September 2018 at Ayr Town Hall. The Applicant's representative Charles Russell, Estate Factor attended. The Respondent did not attend.
6. Having regard to Rule 29 of the Rules and having been satisfied that notice had been given in terms of Rule 24(1) of the Rules, the Tribunal proceeded with the CMD in the absence of the Respondent.
7. The Applicant had lodged a document showing payments made to account at the commencement of the tenancy. The statement of account showed that whilst a payment for £800 had been made at the commencement of the tenancy which represented two months rent in advance this payment had been applied towards the ongoing rent, The Applicant's representative advised that the figure of £3200 outstanding as at the 6th July 2018 was therefore accurate.
8. The Applicant's representative advised that the Respondent had made six payments of £100 since the previous CMD however no payments had been received since 15th August 2018. The Applicant's representative produced an up to date rent account showing rent arrears of £3000 outstanding as at 30th August 2018. The Applicant's representative sought to amend the amount being sought to that figure. As the figure was less than that agreed at the previous hearing the Tribunal allowed the amendment.

9. The Applicant's representative advised that the Respondent had removed from the property. The Applicant's representative stated that the property had been left in a poor state of repair and he wished to seek damages for the condition of the property. The Tribunal advised the Applicant's representative that as a claim for damages had not been included in the intimated application they would not be able to consider that issue. The Tribunal advised the Applicant's representative that it was open to him to raise a separate application in relation to damages. Alternatively the Applicant could formally seek to amend the present proceedings however that would require the case to be adjourned for written amendment to be received and intimated,
10. The Applicant's representative indicated that he wished to proceed with the application in relation to rent arrears and did not wish to seek damages in the present action.
11. The Applicant's representative advised that he did not know the date that the Respondent removed from the property. The keys to the property had been returned to the Applicant on 13th August 2018 via a third party. The Applicant's representative advised that he had not received 2 months written notice as required in terms of the lease and therefore wished to increase the sum sought to take into account rent due for September and October.
12. The Applicant had been advised by the Respondent at the previous CMD on 6th July 2018 that she would be moving out of the property and her new address was provided.

13. Findings in Fact

- a. The parties entered into a lease agreement in respect of the property commencing on 30th April 2012.
- b. The monthly rent due in terms of the agreement was £400.
- c. The Respondent no longer resides in the property and had given notice at the previous CMD that she would be leaving the property.
- d. The tenancy agreement specified that in the event of rent not being paid, interest would be payable by the tenant at 4% above The Royal Bank of Scotland base rate.

e. Arrears of rent are £3000.

Reasons for Decision

14. Having been satisfied that the amount due by the Respondent to the Applicant is due and owing, the Tribunal granted the Order in the sum of £3,000 plus interest at the rate of 2.5%
15. The Tribunal found that the Applicant had been given notice that the Respondent would leave the property on 6th July 2017. The Tribunal was not therefore minded to grant the Applicant's motion to add a further two month's rent arrears to the outstanding figure due to lack of written notice.

Decision

16. Order for payment of £3,000 plus interest thereon at the rate of 2.5%. 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.

Mary-Claire Kelly

Legal Member/Chair

Date

18/9/2018