

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)
Chamber Ref: FTS/HPC/CV/18/1180**

Re: Property at 62 Rowanside Terrace, Ardrossan, Ayrshire, KA22 7LJ ("the Property")

Parties:

Mrs Catherine McVey, 5 Provost Black Drive, Tayport, Fife, DD6 9HD ("the Applicant")

Ms Danielle Andrews, 37 Baird Avenue, Kilwinning, KA13 7AT ("the Respondent")

Tribunal Members:

Virgil Crawford (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that

BACKGROUND

1. By lease dated 28 April 2016 the Applicant let the Property to the Respondent with a monthly rent due of £575.00. The initial period of let was for a period of 6 months from 28 April 2018;
2. The Respondent was in receipt of housing benefit, although the amount received was not sufficient to make payment of the full amount of rent due;
3. The Respondent, on many occasions, failed to make payment of the amounts due to make up the shortfall between the housing benefit received by her and the rent due and, indeed, on many occasions made no payment at all by way of rent;
4. The Tribunal had previously granted an order allowing the Applicant to recover possession of the Property with effect from 23 June 2018;
5. The Applicant applied to the Tribunal for an order for payment of rent arrears. The application was received on 14 May 2018. It requested an order for payment in the sum of £1,449.75, being the amount apparently due at that time. The application was supported by a "Statement of Account" prepared by

letting agents for the Property showing an apparent level of arrears as £1,449.57 as at 7 March 2018;

6. At the Case Management Discussion, an updated "Statement of Account" was provided showing apparent arrears of £2,802.82;
7. The application made reference to the fact that rent arrears were accumulating as, at that point, the Applicant did not have an order for recovery of possession. Notice, accordingly, had been given of a likely request for an order for a greater amount at the Case Management Discussion;

THE CASE MANAGEMENT DISCUSSION

8. The Applicant attended the Case Management Discussion. She was supported by her husband, Mr David McVey. The Tribunal advised the Applicant and her supporter of the terms of Rule 11 of The First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Tribunal Rules") and the limitations on the involvement of the supporter in the proceedings;
9. The Respondent did not attend the Case Management Discussion. The tribunal, being satisfied that in terms of Rule 24(1) of the Tribunal Rules that the Respondent had been given reasonable notice of the date, time and place of the Case Management Discussion, proceeded in the absence of the Respondent, in terms of Rule 29 of the Tribunal Rules;
10. The Applicant advised the Tribunal that the Respondent had now vacated the Property but had never returned the keys. The Applicant was only able to recover possession of the Property on 23 June 2018, in accordance with the earlier order of the Tribunal;
11. The Applicant produced an updated "Statement of Account" from the letting agents, taken to 1 May 2018, showing arrears at that point in time of £2,802.82. This "Statement of Account", however, was significantly different from the earlier one forwarded with the application. Numerous entries differed in a variety of ways. The Tribunal, accordingly, adjourned to consider the updated "Statement of Account";
12. It was difficult to reconcile the two separate "Statements of Account". Accordingly, the Tribunal proceeded to calculate the level of arrears outstanding as at 23 June 2018. The rent due from 28 April 2016 until 23 June 2018 was £14,874.55. The payments made during that period amounted to £13,407.85. The arrears, therefore, were £1,466.70;
13. Part of the payments made by the Respondent included a deposit payment of £575.00. The Applicant advised that this had been uplifted from the tenancy deposit scheme and had been returned to her. She advised the Tribunal it had been used in effecting repairs required to the Property following the Respondent leaving. The Applicant, however, had no paperwork or information relating to the application to the Tenancy Deposit Scheme for return of the deposit, and had no knowledge as to whether a dispute resolution process was used to determine to whom the deposit was payable. In particular, she was unable to say whether the deposit was returned to her, via the letting agents, due to damage to the property or rent arrears. In the circumstances, the Tribunal was unable to speculate as to the circumstances in which the deposit funds of £575 was returned to the Applicant. The Tribunal

- proceeded on the basis that this was a payment which was now retained by the Applicant and took it in to account in assessing the arrears of rent due;
14. In terms of Rule 13(1)(b) of the Tribunal Rules the Tribunal allowed the Applicant to amend the amount claimed to reflect the updated amount now due;
15. The Applicant requested the Tribunal to make an order for payment by instalments. The Tribunal advised the Applicant that it did not have power to do so;

FINDINGS IN FACT

16. The Tribunal made the following findings in fact:-
- a) By lease dated 28 April 2016 the Respondent agreed to let the Property from the Applicant. The rent payable was £575.00 per month, payable on the 1st day of each month;
 - b) The Applicant recovered possession of the Property on 23 June 2018, conform to order of the First Tier Tribunal for Scotland dated 23 May 2018;
 - c) As at 23 June 2018, the arrears of rent outstanding amounted to £1,466.70. That sum was due and payable by the Respondent to the Applicant;

REASONS FOR DECISION

17. The sums ordered to be paid by the Respondent to the Applicant are due and payable in terms of the lease entered into between them;
18. The Tribunal had no information before it to enable it to conclude that any delay or failure to make payment was due to any delay or failure in relation to payment of Housing benefit nor any other benefit;
19. In relation to the Applicant's request for an order for payment by instalments, the Tribunal does not have power to make such an order;

DECISION

An order is granted for payment by the Respondent to the Applicant in the sum of £1466.70.

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.

Virgil Crawford

10 September 2018

Legal Member/Chair

Date