

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

Chamber Ref: FTS/HPC/CV/18/1715

Re: Property at Flat 102, 20 Prospecthill Street, Greenock, PA15 4DJ ("the Property")

Parties:

Mr Thomas Maurice Craig, 1D Millennium Court, Largs, KA30 8SZ ("the Applicant")

Mr Craig Bonnar, Ms Pamela Bradley, Flat 102, 20 Prospecthill Street, Greenock, PA15 4DJ ("the Respondent")

Tribunal Members:

Ewan Miller (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Applicant should be granted a payment order in the sum of £719.96

Background

By way of an Application dated 5 July 2018, the Landlord made an application to the Tribunal under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the Rules")

The Applicant sought payment of the sum of £1071.96 being the amount of arrears as at the date of the Case Management Discussion in respect of a lease of the Property between the parties..

The hearing had been notified to the Respondents. They had been advised that a decision could be made at the Case Management Discussion on 10 September 2018 and that the case did not necessarily need to go to a full hearing of the Tribunal.

Case Management Discussion

The Tribunal held a Case Management Discussion at The Beacon Arts Centre, Greenock on 10 September 2018 at 2pm. The Applicant was present and represented by his solicitor Mr Kenneth Caldwell of Messrs Patten & Prentice, Solicitors, Greenock.

The Respondents were present and represented themselves.

Mr Caldwell presented a rent payment schedule that showed that the arrears at 10 September were £1067.96. The lease specified a rental of £352 per calendar to be paid monthly in advance. Payments had been made most months of £350 in housing benefit. However, some months had been missed and arrears had built up.

The Respondents did not dispute the fact that there were some arrears. They advised that the Applicant had said verbally they could pay monthly in arrears or late for the initial month, rather than in advance. This accounted for some of the shortfall. Ms Bradley of the Respondents submitted that some of the arrears had also occurred due to issues with Housing Benefit and the amount she was entitled to whilst Mr Bonnar of the Respondents had been in jail.

Whilst not making any admission, Mr Caldwell for the Applicant offered in the hearing to reduce the amount of the payment order sought by £352 to take account of the Respondents submission about the verbal agreement.

Findings in Fact

The Tribunal found the following facts to be established from the papers before it:-

- The parties had entered in to a Short Assured Tenancy on 24 October 2017 of the Property;
- An AT5 had also been served on the Respondents on 24 October 2017;
- A monthly rental of £352 was due to be paid each month by the Respondents;
- The Tribunal did not require to determine the question of whether payment should be paid in advance or arrears as the parties accepted the reduction offered by the Applicant of £352 in the Case Management Discussion;
- There remained arrears of rental of £719.96.
- The Applicant's Application had been properly served and notified to the Respondents

Statement of Reasons

The Tribunal granted the order on the basis that it was not disputed that arrears of rental had built up.

The Applicants had offered to reduce the payment order sought by £352 in the course of the discussion. The lease specified that payments were to be made in advance and so, on the face of it, the offer from the Applicant seemed to be generous to the Respondents.

In relation to the other arrears, whilst there may have been reasons as to why these had built up, nonetheless, the sums were still due. It was open to the Respondents to resolve the issues with the local authority about payment and to put any sums recovered to reduce the arrears. In any event, the Respondents position seemed to be more that they had been paid less because Mr Bonnar had been in jail. Whilst this perhaps left Ms Bradley in the unfortunate position of receiving less benefit, it did not change the amounts due under the lease.

Taking account of the amounts specified in the lease as being the rental and taking account of the evidence before it at the discussion, the Tribunal was satisfied that the Applicant's offer to reduce the payment sought by £352 was more than needed to be offered and so was content to reduce by that amount alone.

The Tribunal considered whether the matter should be referred on to a full hearing of the Tribunal. The Tribunal did not see any merit in doing so. The Respondents did not have any legal basis to object to the order being granted. Referral to a full hearing of the Tribunal would only serve to delay the Applicant seeking payment of the funds due to him and could arguably lead to an order for a greater amount being imposed. On that basis the Tribunal was satisfied that it was appropriate to grant the order.

The Application made reference to expenses being awarded if appropriate. In terms of Rule 40, expenses should only be granted if a party has acted unreasonably in the conduct of a case. The Tribunal was not of the view that the Respondents had acted unreasonably in the course of conduct of the case. They had acted in an appropriate fashion during the discussion. No award of expenses would be made against them.

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.

Ewan Miller

Legal Member/Chair

Date

10/9/18