



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) arising from a tenancy under Section 1 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/23/1401

Re: Property at 9 Annfield Glen Road, Ayr, KA7 3PR (“the Property”)

Parties:

Mr Brian McKinlay, 4 Robsland Avenue, Ayr, KA7 2RW (“the Applicant”)

Mr James Barclay, Ms Stacie Barclay, sometime residing at 9 Annfield Glen Road, Ayr, KA7 3PR and whose whereabouts are currently unknown to the Applicant (“the Respondent”)

Tribunal Members:

Susan Christie (Legal Member) and Leslie Forrest (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for the Respondents to pay to the Applicant the sum of £5,000 is granted:

Background

1. The application is for a payment order for unpaid rent due and was accepted by the tribunal on 30 June 2023.
2. The application paperwork was served on the Respondents by Sheriff Officers on 23 August 2023, personally on Stacie Barclay who also accepted James Barclay’s copy.
3. Written representations were invited from the Respondents by 11 September 2023. None were submitted by then.
4. A Case Management Discussion (CMD) took place by way of conference call on 27 September 2023 at 10am. Both Parties participated, with Mr Ferry, solicitor representing the Applicant. A CMD Note of the same date was produced along with a Direction requiring both Parties to provide information and documentation.

5. In response to the Direction, the Applicant produced a detailed schedule of payments and an invoice and report from a plumbing and heating engineer regarding a call out to the Property. The Respondents produced an e mail of 24 October 2023 and photographs said to be taken in the Property and an e mail from a police officer regarding a complaint made. The Respondents were granted permission by the tribunal to produce video footage, but this was not ultimately submitted. The Respondents did not fully comply with the Direction, and the response was lacking in respect of the reasons that the full rent remained unpaid, and no evidence had been produced showing that they had intimated any ongoing repairs issues needing attending to after the initial water ingress incident around July 2022.

The Hearing

6. A Hearing took place by way of conference call on 29 November 2023, and commenced at 10.10 am, slightly later than scheduled. Mr Ferry, solicitor represented the Applicant. The Respondents did not join the call. The tribunal noted that intimation of the Hearing and joining instructions were issued to the Respondents by recorded delivery post on 20 October 2023 and signed for by Ms Barclay on 21 October 2023. The tribunal was accordingly satisfied that the Respondents had received imitation and proceeded with the Hearing in their absence.
7. The Applicant's representative advised the tribunal that:
 - a) formal eviction procedures had been initiated and the date assigned for the completion of the ejection was scheduled for 4 December 2023. The paperwork had been served at the Property by Sheriff Officers on 16 November 2023 and it appeared that the Respondents were not living at the Property. The Applicant is unaware of the Respondents actual whereabouts currently.
 - b) The Applicant seeks an Order for payment of a restricted sum of £5000 from the Respondents.

Findings in Fact

- I. A Private Residential Tenancy (PRT) over the Property was entered into between the Parties, with a start date of 4 April 2022.
- II. The contractual rent due to be paid by the Respondents to the Applicant is £500 per calendar month, payable in advance.
- III. A payment of £500 was made by the Respondents to the Applicant on or around 4 April 2023. The Parties were not agreed on what this payment was for.
- IV. Four rent payments were made by the Respondents to the Applicant by bank transfer on 7th May 2022 ,23rd May 2022, 9th June 2022, and 8th July 2022. This totalled £2000.
- V. No rent had been paid by the Respondents since 8 July 2022.
- VI. As of 28 October 2023, the rent due and owing by the Respondents to the Applicant totals £8,000.

- VII. Around July or August 2022 there was an incident of water ingress in the kitchen of the Property and deemed to be an emergency repair. This was attended to by the Applicant who employed a tradesperson.
- VIII. The water ingress appeared to have caused damage to the finishes in the kitchen, the extent of which it was impossible for the tribunal to determine, as evidence had not been led by the Respondents. The Applicant has restricted his claim in recognition.
- IX. The Applicant has restricted his claim for unpaid rent to reflect the uncertainty over the intention behind the initial payment of £500 on 4 April 2023 and the likely unattended remedial work to the finishes in the kitchen.
- X. The tribunal determined that the sum granted in the Order is appropriate for the reasons given in this Decision.
- XI. An Order for the Respondents to pay to the Applicant £5,000 is made.

Reasons for Decision

The tribunal proceeded in the absence of the Respondents as they had received proper intimation of the Hearing.

The tribunal noted that the Respondents had not provided the tribunal with a full response to the Direction dated 27 September 2023 in that they had not provided written details of the reasons the rent remained unpaid, provided no written evidence of any correspondence sent by them or their solicitor to the Applicant, or his solicitor, in relation to the unpaid rent and relating to any outstanding repairs; not had they provided any documentary evidence regarding the amount of any deposit said to be paid and when.

The paperwork that had been produced by the Parties was discussed with the Applicant's Representative. The Applicant himself did not participate and the Hearing proceeded on a submission. It was submitted that he had a chronic health condition. This detracted from his recollection in relation to the reason for the first payment made and in relation to events after the emergency repair.

The tribunal is satisfied that the unpaid rent which is due and owing to 28 October 2023 is £8,000. Contractual rent was due to be paid at £500 per calendar month in advance on 28th of the month. The tenancy commenced on 4 April 2022. This meant £10,000 should have been paid by 28 October 2022. Only four payments of rent were made by the Respondents towards rent between 7 May 2022 and 8 July 2022, each of £500. Those payments totalled £2,000.

For the purposes of determining this application, the Applicant concedes that a further £500 was likely to have been paid by the Respondents on 4 April 2022. Whether this was a deposit, a payment towards rent or for something else was an issue that was live between the Parties at the Case Management Discussion. Had the Respondents participated in the Hearing this could have been further explored. However, the Applicant has taken a pragmatic approach to this and conceded it can be deducted in full in the final reckoning of what remains to be unpaid by the Respondents to the Applicant.

The other issue that the tribunal required to consider today was whether any other sums were due to be deducted from the rent due by account of the water ingress incident. The tribunal had heard that this occurred around July or August 2022. The tribunal noted that photographs had been produced by the Respondents which

appeared to depict damage occasioned in the kitchen of the property and text exchanges between the Parties about one incident of water ingress and the need for an emergency repair. The tribunal noted that evidence has been produced by the Applicant that showed action had been taken to tackle the source of the problem and that appeared to have been resolved. However, any further remedial work needed in the kitchen to restore finishings did not seem to have been attended to. The tribunal noted from the Respondent's paperwork that the Applicant had been told to stay away from the Property and that might have been a factor in that not being followed up. The Applicant's Representative was prepared to take a pragmatic approach to the unresolved remedial work and conceded that the Applicant was prepared to recognise that there was likely internal damage to the finishes in the kitchen occasioned by the water ingress that had not been attended to. The sum sought by way of an Order is restricted to £5000 to reflect the fact that further remedial work had not been carried out. The Applicant's position is that no further unpaid rent will be pursued out with this action.

The tribunal observed that an abatement of rent ought to be made for the omission in attending to any remaining internal damage to the finishes in the kitchen as that would have detracted from the Respondents enjoyment of that room. The concession of some £2,500 made by the Applicant in this application was generous. Had the tribunal heard full evidence in sufficient detail of the sequence of events from both Parties, the abatement of rent may well have been less. The tribunal is satisfied in all the circumstances that an Order for payment be granted for the sum sought.

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.

Susan Christie

Legal Member/Chair

29 November 2023
Date