



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/23/1501

Re: Property at Isle Gardens House, Kirkcudbright, DG6 4XB (“the Property”)

Parties:

The Hope-Dunbar Discretionary Trust, St Marys Isle of Estate, Banks, Kirkcudbright, DG6 4XF (“the Applicant”)

Ms Lesley Ferguson, 16 Marple Place, Castle Douglas, DG7 1EF (“the Respondent”)

Tribunal Members:

Ms H Forbes (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 should be granted in favour of the Applicant in the sum of £5,295.44.

Background

1. By application received in the period from 10th May to 16th August 2023 and made under Rule 70 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Rules”), the Applicant applied for an order for payment in the sum of £5,608.92. The Applicant’s representative lodged a rent statement, a short assured tenancy agreement between the parties commencing on 1st February 2105, and vouching in respect of certain sums sought.
2. The application and notification of a Case Management Discussion was served upon the Respondent by Sheriff Officer on 5th October 2023.

The Case Management Discussion

3. A Case Management Discussion (“CMD”) took place by telephone conference on 9th November 2023. The Applicant was represented by Mr Adam Turnbull, Solicitor. The Respondent was not in attendance.

4. The Tribunal considered the terms of Rule 29. The Tribunal determined that the requirements of Rule 17(2) had been satisfied, and it was appropriate to proceed with the application in the absence of the Respondent.
5. Mr Turnbull made a motion for an order in the sum sought, which was comprised of £3690 for rent arrears, £409.32 for gas boiler repairs caused by the Respondent leaving the Property vacant over the winter and inadequately heating the Property, £100 for lock replacement, and £1409.60 for cleaning of the Property and removal of belongings and rubbish left by the Respondent. Mr Turnbull referred to breaches of clauses Eight, Twelve, Thirteen and Eighteen of the tenancy agreement between the parties.
6. Responding to questions from the Tribunal regarding the lack of vouching for the lock replacement, Mr Turnbull said no further documentation was available in that regard. Responding to questions concerning the fact that the gas boiler invoice was made up of £213.48 in respect of a boiler service and £195.84 in respect of boiler repairs, Mr Turnbull said he understood the service to have been necessary following the repairs to the boiler. Mr Turnbull provided further information in respect of the work carried out by staff of the estate and the charging for such work.
7. The Tribunal offered Mr Turnbull the opportunity to adjourn to another date to provide further vouching in respect of the locks, and information in respect of the gas boiler service. Mr Turnbull moved the Tribunal, if it was so minded, to take a pragmatic approach by striking out these sums and granting an order in an amended sum.

Findings in Fact and Law

8.
 - (i) Parties entered into an assured tenancy that commenced on 1st February 2015 with rent due in the sum of £410 per month.
 - (ii) The tenancy ended on or around 8th February 2023.
 - (iii) Rent lawfully due in terms of the tenancy agreement has not been paid by the Respondent.
 - (iv) The Applicant is entitled to recover rent lawfully due.
 - (v) The Respondent has breached clause Eight of the tenancy agreement between the parties by failing to keep the subjects in good order and condition
 - (vi) The Respondent has breached clause Twelve of the tenancy agreement between the parties by failing to keep the Property clean, neat and tidy.

- (vii) The Respondent has breached clause Thirteen of the tenancy agreement between the parties by failing to keep the Property occupied and fired, and failing to take precautions to avoid consequent damage to the Property.
- (viii) The Respondent has breached clause Eighteen of the tenancy agreement between the parties by failing to remove her personal effects at the end of the lease.
- (ix) The Applicant is entitled to reparation for costs incurred in rectifying the Respondent's breaches.

Reasons for Decision

- 9. The Respondent has failed to make payment of rent lawfully due. The Applicant is entitled to recover rent lawfully due in terms of the tenancy agreement between the parties.
- 10. The Respondent has failed to carry out her obligations in terms of the tenancy agreement between the parties. The Applicant has incurred costs in respect of rectifying the Respondent's breaches. The Applicant is entitled to recover such costs.
- 11. The Tribunal decided to strike out the sum of £100 for the lock replacement, in the absence of vouching, and the sum of £213.48 in respect of the gas boiler service, in the absence of further information as to why a service was necessary.

Decision

- 12. An order for payment is granted in favour of the Applicant in the sum of £5,295.44.

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.



Legal Member/Chair

Date: 9th November 2023