



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/24/2777

Re: Property at Hillockhead Farmhouse, Glenkindie, Alford, AB33 8SE (“the Property”)

Parties:

J & J Strachan, New Mains, Glenkindie, Alford, AB33 8RP (“the Applicant”) and Mr Alan Muirhead, 36 Main Street, New Byth, Turriff, AB53 5XD (“the Respondent”)

Tribunal Member:

G McWilliams Legal Member)

Decision in absence of the Respondent

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined as follows:

Background

1. This is an Application for a payment order lodged under Rule 70 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the 2017 Rules”). (Application for civil proceedings in relation to an assured tenancy) for an order for payment in respect of claimed unpaid rent and compensation for losses incurred.
2. The parties’ Short Assured Tenancy Agreement (“SAT”) had been correctly and validly prepared in terms of the provisions of the Housing (Scotland) Act 1988, and the procedures set out in that Act had been correctly followed and applied.
3. The Respondent had been validly served by Sheriff Officers with the Notification of the Case Management Discussion (“CMD”), Application papers and Guidance Notes from the Tribunal on 31st October 2024.

Case Management Discussion

4. A CMD proceeded remotely by telephone conference call at 2.00pm on 12th December 2024. The Applicant's partners and trustees Mr James Strachan and Mrs Nancy Strachan attended. The Respondent Mr Muirhead did not attend and was not represented. There was no explanation for his absence.
5. Mrs Strachan referred to the Application and the documentation which she and her husband had lodged in support namely a rent statement, fuel invoice and Sheriff Officers' invoice. She said that the Applicant sought a payment order in respect of unpaid rent, fuel costs, Sheriff Officers' costs for carrying out enforcement action in respect of the eviction order granted by the Tribunal on 7th December 2023, and cleaning fees. She and Mr Strachan each stated that the amount of cleaning fees sought, for the works they carried out themselves to clean and clear the Property after Mr Muirhead left in April 2024, was based on a commercial cleaning rate of £17.00 per hour which they had previously been charged by an independent company. Mrs Strachan said that the Applicant had recovered Mr Muirhead's tenancy deposit from the tenancy deposit scheme in which it had been lodged, of £695.00, and had used those monies to replace damaged floor coverings throughout the Property. Mrs Strachan stated that the Property had been let to Mr Muirhead unfurnished but that when he vacated it was furnished and in a very bad state of repair and cleanliness. Mrs Strachan also said that after Sheriff Officers had been instructed to enforce the eviction order Mr Muirhead remained in the Property until shortly before Sheriff Officers were due to attend to forcibly remove him.

Statement of Reasons for Decision

6. Section 16 of the Housing (Scotland) Act 2014 provides as follows:

"16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3) Part 1 of schedule 1 makes minor and consequential amendments."

7. Accordingly, the Tribunal now has jurisdiction in relation to claims by landlords (such as the Applicant) for payment of unpaid rental monies, and compensation for losses, against tenants (such as the Respondent) under a SAT.
8. The Tribunal considered the terms of the parties' SAT, the rent statement, fuel and Sheriff Officers' invoices as well as the submissions made by Mr and Mrs Strachan. Having done so, the Tribunal found in fact that when Mr Muirhead left the Property there were rent arrears owing of £6,422.50, and that replacement of the fuel in the fuel tank, as required in terms of the parties' SAT, cost the sum of £758.63. Further the Tribunal found in fact that Mr and Mrs Strachan had to instruct Sheriff Officers to carry out enforcement of the eviction order previously granted to them by the Tribunal. The Tribunal also found in fact that Mr and Mrs Strachan had suffered loss and inconvenience in having to carry out cleaning at the Property after Mr Muirhead vacated it. The Tribunal found in law that in terms of the parties' SAT Mr Muirhead was due to pay rent to the Applicant, was liable to replace the supply of fuel at the Property when he left it, and was obliged to vacate the Property in terms of the Tribunal's order. The Tribunal further found in law that Mr Muirhead did not carry out his obligations and that the Applicant is entitled to recover their losses incurred as a result of Mr Muirhead's failures in this regard. The Tribunal found that Mr Muirhead was also liable to compensate the Applicant for the cleaning that they had to carry out. The Tribunal found that it was reasonable that the sum of £500.00 in respect of cleaning costs be awarded to the Applicant. Mr and Mrs Strachan agreed that this was a reasonable sum, notwithstanding that they had claimed £680.00 in this regard. In reaching their decision the Tribunal also relied on the fact that Mr Muirhead had been effectively served with the Application papers and notification of the CMD but had not attended at the CMD and had not made representations to contradict and/or oppose the terms of the Application and the order sought.

Decision

9. The Tribunal made an order for payment by the Respondent Mr Alan Muirhead to the Applicant J & J Strachan of the sum of £8,012.76.

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.

G McWilliams

12th December 2024

Legal Member

Date

Decision (in absence of the Respondent)