



**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/19/1101

Re: Property at 14 Dupplin Road, Perth, PH2 7EN (“the Property”)

Parties:

Mrs Moira McKerracher, 22 Colenhaugh, Stormontfield, Perth, PH2 6DQ (“the Applicant”)

Mr Adrian Marx, Unknown, Unknown (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Miss Ann Moore (ordinary member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be granted and made an Order for Payment in the sum of £1,640.50.

Background

By application, received by the Tribunal on 9 April 2019, the Applicant sought an Order for Payment by the Respondent to the Applicant. The Applicant stated that the Respondent had vacated the Property on 28 February 2019, but had not paid the rent which had become due for the months of January and February 2019.

The application was accompanied by copies of a Short Assured Tenancy Agreement, commencing on 31 December 2015 at a monthly rent of £795. The Applicant was seeking interest at 8% on the unpaid rent and a further sum of £20 plus VAT in respect of two reminder letters which the Applicant’s agents had sent to the Applicant. The Short Assured Tenancy Agreement provided for interest on unpaid rent at the rate of 8% and for a charge of £10 plus VAT for any reminder letter which had to be sent to the Respondent.

On 4 February 2019, after receiving notice under Section 33 of the Housing (Scotland) Act 1988 that the Applicant required possession of the Property, the Respondent sent an e-mail to the Applicant’s agents in which he stated that he was unwilling to pay the full rent for the entire period of the tenancy as the Respondent

had been without a bathroom for a large part of the tenancy as the plumbing was not fit for purpose and the front garden was unsafe. The Respondent had decided to pay the rent with a £200 per month deduction for six months of the tenancy, amounting to £1,200, which could be used in lieu of the last two months' rent. The Respondent would settle the balance when the deposit was refunded.

Case Management Discussion

A Case Management Discussion was held on 18 June 2019. The Respondent was present, but, contended that he had not received certain papers relative to the application. The Tribunal accepted that the Respondent had not had adequate opportunity to prepare for the Case Management Discussion and that the appropriate step was to fix a full hearing, which was set for 29 July 2019. The Hearing would focus upon whether the Respondent was entitled to withhold rent and both Parties were informed that they must lodge documents and lists of witnesses no later than two weeks before the Hearing. The Respondent did not lodge any documents or list of witnesses with the Tribunal.

On 12 July 2019, the Applicant submitted additional information, including a statement from her letting agents, Perthshire Property Services, to the effect that the Respondent had not at any time during the tenancy informed them that he and his wife did not feel that any repairs were not being dealt with or that they wished to withhold rent due to repairs not being carried out. The agents had experienced difficulty in obtaining access to carry out inspections of the Property and had only discovered that there was an issue with the upstairs shower when they got access to carry out an inspection on 20 November 2018. It had never been reported to them and, when they found out, it was dealt with promptly.

In the submissions of 12 July 2019, the Applicant advised the Tribunal that the matter of the deposit had been settled by Safe Deposits Scotland, who had determined that no part of the deposit should be refunded to the Respondent, but the Respondent had made no attempt subsequently to make payment of the balance that, in his view, was payable, namely £395.

The Applicant accepted that the grounds of the Property were subject to a high groundwater table, but stated that there were surfaced paths from both doors of the Property to the street. Repairs had been carried out to the driveway to enable the Respondent to use it for car parking. In January 2017, the Respondent had reported a leak from the upstairs shower, which had been remedied within a few days, on 13 January 2017. In May 2017, the Respondent had reported another leak and this, again had been dealt with quickly, on 17 May 2017. The house had been visited on 13 and 14 June 2017, as the works had not been successful and further work was undertaken at that time. All issues reported to the Applicant's agents had been dealt with as soon as possible following reporting and access being provided.

At no time prior to 4 February 2019 had the Respondent withheld or threatened to withhold any rental payments, which would infer that the Respondent had not been dissatisfied with the repair work timings as they occurred.

The Hearing

The Hearing took place at Inveralmond Business Centre, Perth, on the morning of 29 July 2019. The Applicant was present and was accompanied by her husband. The Respondent had e-mailed the Tribunal earlier on that morning to say he was unwell and unable to attend the Hearing but, as the Respondent had not lodged any

documents or a witness list within the timescale specified at the Case Management Discussion, the Tribunal decided that the Hearing would proceed in his absence.

The Applicant told the Tribunal that there was, in addition to the upstairs shower room which had been the subject of issues which had led to repair works, there was a full bathroom (bath with shower over) on the ground floor, so at all times, the Respondent and his family had had access to full bath and shower facilities. All repairs reported to the Applicant's agents had been carried out timeously. There was a perfectly good tarmac pathway around the house, which meant that it was unnecessary to cross the grass at the front. The recreational part of the garden was to the rear of the Property.

The Applicant referred the Tribunal to her written submissions and asked the Tribunal to conclude that the Respondent had no right to withhold any part of the rent that he accepted had not been paid.

Reasons for Decision

The Tribunal accepted the evidence of the Applicant, which included the statement by the letting agents and copy Invoices from contractors, that all issues reported by the Respondent had been dealt with timeously. The Respondent had not provided any evidence to suggest the position was otherwise, apart from his e-mail of 4 February 2019, during his notice period, stating that he was going to withhold £1,200 from the rent that had become due. The Tribunal also noted that the evidence of the Applicant indicated that at no time had the Respondent been denied the facilities of a bath or shower, as there was a full bathroom on the ground floor of the Property. The Tribunal was also satisfied that access to the Property had not been impeded by the fact that the ground at the front was affected by a high groundwater table, as there were adequate tarmac paths leading from the street to the entrance doors.

Having considered all of the evidence before it, the Tribunal decided that there was no justification for the Respondent withholding any part of the rent that had become due for January and February 2018. The lease contained a provision for interest at 8% on unpaid rent and for charges of £10 plus VAT for each of two reminder letters that had been sent to the Respondent. Accordingly, the Tribunal determined that the amount sought in the application was due by the Respondent to the Applicant and that an Order for Payment of that sum should be made.

Decision

The Tribunal determined that the application should be granted and made an Order for Payment in the sum of £1,640.50.

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

29 July 2019

Date