



**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/19/1551

Re: Property at 115 Headland Court, Aberdeen, AB10 7HW (“the Property”)

Parties:

Mrs Pamela Scott, 62 Gillbrae, Dumfries, DG1 4BP (“the Applicant”)

Mr Colin Rennie, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to an order for payment of £1,370 by the Respondent.

Background:

The application was made on 21 May 2019 by the Applicant. The application asked for a payment order to be made for the sum of £820 for unpaid rent up to 4 June 2019. Attached to the application were the Short Assured Tenancy Agreement for the property for the lease commencing on 5 December 2015, statement of arrears up to and including 4 June 2019 contained in a letter to the Respondent from the Applicant dated 10 May 2019, further letter to Respondent dated 18 May 2019 and bank statements of the Applicant up to and including 15 May 2019.

A Case Management Discussion (CMD) was scheduled for 19 August 2019 and both parties advised of the date, time and venue.

The service on the Respondent had been attempted by Sheriff Officers unsuccessfully and had thus been carried out by Advertisement confirmed by the First-tier Tribunal (the Tribunal) certificate dated 19 August 2019. The Respondent was advised in the notification that the Tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application.

No representations were received from the Respondent.

The Applicant had updated the sum sought in the payment order by emails dated 10 June 2019 including a copy of a further letter sent by the Applicant to the Respondent on 8 June 2019 updating the rent arrears figure to £1,370. On 2 August 2019 the Applicant also provided to the Tribunal updated bank statements and the documentation received from Safe Deposit Scotland regarding the deposit return followed on 10 August 2019 by a further email attaching the check out report and copy email to the Respondent dated 10 August 2019 asking for payment of £1738.49 in rent arrears and other payments the Applicant considers due to her from cleaning, redecoration and damage.

The Case Management Discussion

The Applicant attended in person. The Respondent did not attend and had not been in contact with either the Applicant or the Tribunal prior to the CMD. No representations were received from the Respondent.

The Applicant explained that she had given notice to the Respondent and the tenancy had ended on 5 July 2019. The arrears up to the end of the tenancy were £1,320 and there was a late payment fee of 2 x £25 due in terms of the tenancy as the rent for May and June had not been paid. This was stated in the appendix to the tenancy agreement and had been notified to the Respondent in the Applicant's letter of 8 June 2019 advising the Respondent of the final amount due in rent arrears. The letter of 8 June 2019 had been emailed to the Respondent on 10 June 2019 and the Applicant showed the email on her telephone to the legal member of the Tribunal. The Respondent had texted the Applicant on 11 June 2019 advising her that he had moved out. The Applicant then carried out an inspection of the property and had used the Safe Deposit Scotland service in returning the deposit to her. The Respondent had requested a DAN number by email during that process, which is why the Applicant states she is confident that the email address for the Respondent was still valid and he would have been aware of her email of 10 June 2019 and her letter setting out the final sum due in arrears to the end of the tenancy and the late fees.

The legal member explained that the further request to include issues such as cleaning charges, redecoration and damages was a new issue that had not been raised in the application and that it could not be verified that this had been intimated to the Respondent prior to the CMD as it had only been raised by the Applicant on 10 August 2019 in an email to the Respondent which gave the Respondent a further 7 days to take action.

Findings in Fact:

- 1. The parties entered into a Short Assured Tenancy for the property with a start date of 5 December 2015 and a monthly rent of £550 payable in advance.**
- 2. The rent per month had been reduced to £500 from 5 December 2018 onwards.**
- 3. The tenancy ended on 5 July 2019 and the Respondent has vacated the property.**
- 4. No rent was paid in November 2018.**

5. The Respondent has paid a total of £230 in part payment of the outstanding rent for that month.
6. No further payments have been received on 5 May 2019, 5 June 2019.
7. For any late payment of more than 3 days a late payment fee of £25 is chargeable in terms of the tenancy agreement.
8. The Applicant had advised the Respondent of said fee and outstanding arrears in her letter to him dated 8 June 2019.
9. The deposit of £550 had been released by Safe Deposit Scotland to the Applicant and applied to charges made in connection with the tenancy such as cleaning and redecorating charges and damages to the property.

Reasons for Decision

The Tribunal considered that the facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or
- (c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;
- (b) identifying what facts are agreed between the parties;
- (c) raising with parties any issues it requires to be addressed;
- (d) discussing what witnesses, documents and other evidence will be required;
- (e) discussing whether or not a hearing is required; and
- (f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Power to determine the proceedings without a hearing

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

- (a) may make a decision without a hearing if the First-tier Tribunal considers that—
 - (i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and
 - (ii) to do so will not be contrary to the interests of the parties; and
- (b) must make a decision without a hearing where the decision relates to—
 - (i) correcting; or
 - (ii) reviewing on a point of law,a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

The documents lodged are referred to for their terms and held to be incorporated herein.

The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case.

The Respondent was made aware of the possibility that the Tribunal could deal with the matter at the Case Management Discussion.

The Respondent has accrued rent arrears of the amount of £1,320 to the end of the tenancy on 5 July 2019. These are not disputed. He was aware of that claim and fair notice of this had been given in the original application and the letters by the Applicant to the Respondent of 18 May 2019 and 8 June 2019. In the letter of 8 June 2019 the Respondent had also been made aware of the charge of 2x£25 in late payment fees. The bank statements show that no further payments had been received. The Respondent had fair notice of the increase in the charges sought in the order through the original application and the letter of 8 June 2019. The Tribunal thus allowed the amendment of the sum sought to £1,370 at the hearing on the application made on 2 August 2019 in terms of Rule 14 A of the Rules of Procedure. The Tribunal was satisfied that the Applicant was entitled to payment of rent arrears of £1,320 and late fees of £50 by the Respondent.

The First-tier Tribunal for Scotland (Housing and Property Chamber) refuses the request of the Applicant to amend the application to include the new matter of cleaning, damages and redecorating charges as it could not be satisfied that fair notice had been given to the Respondent regarding these new issues. The Tribunal offered the Applicant the option of a further CMD to allow time for intimation of that new claim but the Applicant preferred to have the original application for arrears of rent dealt with at this stage and to have the other matters dealt with separately in due course.

Decision

The Tribunal grants an order for payment of the sum of £1,370.

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.

Petra Hennig-McFatrige

Legal Member/Chair

13. 8. 19

Date