



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/19/1590

Re: Property at 17 Marketgate, Arbroath, DD11 1AZ (“the Property”)

Parties:

Mr Alan Davidson, 5 Gayfield, Arbroath, DD11 1QJ (“the Applicant”)

Ms Nikki Webster, 6 Rosemount Road, Arbroath, DD11 2AU (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatrige (Legal Member)

Decision in absence of the Respondent

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment of £5,625 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 £7,500 for unpaid rent. Attached to the application were the Tenancy Agreement, rent statement and email exchanges between the parties from 19 November 2016 to 14 September 2017, copy letter from the Applicant to his then solicitor Mr Sym dated 9 October 2017 and email to Mr Sym 9 June 2017, email exchange between the Applicant and Home Energy Scotland between 15 January 2017 and 6 February 2017, email correspondence between the Applicant and Angus Council from 2 March 2017 to 30 May 2017, copy letter 18 November 2016 from the Applicant to the Respondent, Facebook message exchange between the parties 2 June 2016 to 18 November 2016.

A Case Management Discussion (CMD) was scheduled for 25 July 2019 and both parties advised of the date, time and venue. The Respondent was advised that that the Tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application.

The notification and accompanying documentation was served by Sheriff Officers on the Respondent on 18 June 2019.

No representations were received from the Respondent and the Respondent did not attend the CMD.

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

The Case Management Discussion

The Applicant attended. He stated that he did not have the decree granting possession of the property from Forfar Sheriff Court as this was with his solicitors but that the email correspondence with the Respondent shows clearly that the Respondent had been evicted from the property and had retained the key and left belongings in the property until September 2017. He further stated that the eviction was granted on the basis of non payment of rent and he had been advised by his solicitor that the Respondent could not be moved out of the property until the end of July 2017. He thinks the Respondent actually moved out at the end of May 2017 but kept property in his house and did not return the keys. He was at sea after that date and thus did not instruct that the locks be changed or the property moved out. The keys were finally posted back by the Respondent on 14 September 2017. The matter of when the tenancy actually ended and up to what point he would be entitled to payment of rent was discussed in detail. The Applicant pointed to the email of 1 August 2017 in which the Respondent wrote: "Today is the date that I need to hand back the property." and the Applicant's email to his solicitor dated 9 June 2017 referring to "bearing in mind that she could withhold keys until July 31". The Applicant stated that he would not be insisting on rent beyond the date of 31 July 2017 as this was the day considered by both parties as the day the tenant should have handed back the keys. The claim should thus be for the months of October 2016 to July 2017 for a monthly amount of rent of £625. He further stated that he had received a deposit for the amount of £625 which should be deducted from the amount due. Thus the amount of the order should be £5,625.

Findings in Fact:

- 1. The parties entered into an Assured Tenancy for the property with a start date of 1 July 2016 and a monthly rent of £625 payable in advance and due on the first day of each month.**
- 2. As per the rent statement lodged by the Applicant only 3 payments of rent had been made. These were for the months of July, August and September 2016.**
- 3. No rent was paid for the months from October 2016 to July 2017.**
- 4. The tenancy ended on 31 July 2017.**
- 5. No payment decree had been obtained from the Sheriff Court.**
- 6. A deposit of £625 was paid at the start of the tenancy and has been applied towards the rent arrears.**

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 Respondent has not made any representations and did not attend the CMD. The facts of the case are not disputed. There was no opposition to the order being granted. 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.

In terms of the tenancy agreement the rent was £625 per month. No rent was paid between October 2016 and the date when the Respondent had to hand back the property on 31 July 2017. She referred to that date in her email to the Applicant of 1 August 2017. He referred to that date in his email to his solicitor of 9 June 2017. The Tribunal is satisfied on the basis of the emails referred to above that the tenant was still in possession of the property until 31 July 2017 and that the Applicant was entitled to remuneration for the occupation of the property by the Respondent until that date. Although the correspondence indicates that the Respondent gave as a reason for non-payment of rent that she was withholding rent due to problems with the property, no evidence was led on behalf of the Respondent as to why payment would not have been due. The application was not opposed. The Tribunal is thus

entitled to make a payment order for £5,625 representing the amount of the monthly rent stated in the tenancy agreement for 10 months at the rate of £625 per month from October 2016 to July 2017 under deduction of the deposit amount of £625 applied to the arrears by the Applicant.

Decision

The Tribunal grants an order for payment of the sum of £5,625.

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

Date

25.7.19