



**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/19/1818

Re: Property at 2 Laurie Place, Forestmill, Alloa, FK10 3QH (“the Property”)

Parties:

**Mr Adam Kindreich, 3 rua Nossa Senhora do Carmo, Bemposta, 3250-024
Almoester AVZ (“the Applicant”)**

Mr Brian Kindreich, 71 Ashley Terrace, Alloa, FK10 2BB (“the Respondent”)

Tribunal Members:

Alastair Houston (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of SEVEN HUNDRED AND TWO POUNDS AND SIXTY SIX PENCE (£702.66) STERLING.

1. Background

- 1.1 This is an application for an order for payment of £878.33 being the cost claimed by the Applicant in terms of rent for a period the Respondent occupied the property following the expiry of a notice to quit. The Application was accompanied by a copy of the written tenancy agreement, a copy of the notice to quit, proof of service and supporting documentation relating to the subsequent tenancy entered into following the Respondent vacating the property.
- 1.2 The application was conjoined with two others involving the parties, being applications FTS/HPC/CV/19/0810 and FTS/HPC/CV/19/1607.

2. The Hearing

- 2.1 The Hearing of this application took place on 26 September 2019. The Applicant took part via conference call. The Respondent was personally

present and accompanied by his daughter, Sophie Kindreich, as a supporter. The same issues as related to the conjoined applications were applicable to the present application. A summary of the parties positions is contained within paragraphs 2.1 to 2.14 of the written decision relating to FTS/HPC/CV/19/0810.

3. Findings In Fact

- 3.1 The parties entered into a tenancy agreement which commenced on 1 September 2019.
- 3.2 The Applicant served a notice to quit to terminate the tenancy on 1 May 2019.
- 3.3 The Respondent continued in occupation of the property until 3 June 2019.
- 3.4 The rent payable under the tenancy agreement was initially £320 per month, increasing to £340 per month from September 2018.
- 3.5 In terms of Clause 11 of the written tenancy agreement, the Respondent was obliged to take all reasonable steps to prevent the freezing of the water system.
- 3.6 In terms of Clause 15 of the written tenancy agreement, the Respondent was liable for payment of one month's rent, in addition to rent payable in respect of the period of further occupation, should he not vacate the property upon the termination of the contractual tenancy.
- 3.7 The Respondent failed to make payment of the rent due for the period beginning 1 March 2019 until 3 June 2019.
- 3.8 At the commencement of the tenancy agreement, the heating and hot water system within the property was not new.
- 3.9 The Respondent reported faults with the heating and hot water system on a number of occasions until its replacement in February 2016.
- 3.10 In response to these reports, the Applicant instructed necessary repairs to be effected within a reasonable time.
- 3.11 Following the installation of a new heating and hot water system, the system was, for the remainder of the tenancy agreement, in a good state of repair and in proper working order.
- 3.12 On or around 1 February 2019, there was an escape of water within the property as a result of a broken speed fitting most likely caused by freezing temperatures.

4. Reasons For Decision

- 4.1 The arguments made by the Respondent as to why rent was not lawfully due have been addressed in application reference FTS/HPC/CV/19/0810. The same conclusion of the Tribunal applies. The issue that requires to be determined is whether the sum sought by the Applicant is due.
- 4.2 The Applicant has based the sum sought on a higher rent than that contained within the written tenancy agreement. It was not in dispute that, notwithstanding the notice to quit, the rent that would have otherwise been chargeable for the months of May and June 2019 was £340.00 per month. The Applicant was seeking the equivalent of £430.00 per month, based on what he deemed to be a "market" rent that his new tenant was paying.
- 4.3 The Tribunal does not accept this submission. In terms of Section 16(1) of the Housing (Scotland) Act 1988, following termination of a contractual Assured tenancy, a tenant continues to have the benefit of a statutory assured tenancy on the same conditions (the exceptions to which are not relevant to the present application). The rent chargeable for the period must therefore be £340.00 per month. Whether or not that was a "market" rent is not a matter for the Tribunal.
- 4.4 The Tribunal accepts that Clause 15 of the tenancy agreement entitles the Applicant to charge a further one month's rent in addition to that due for the period the Respondent continued in occupation following the expiry of the notice to quit. The total sum due is £702.66.

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.

Alastair Houston

Legal Member/Chair

12 NOVEMBER 2019

Date