



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) arising from a tenancy under Section 32 of the Housing (Scotland) Act 1988 ('the 1988 Act')

Chamber Ref: FTS/HPC/CV/20/1888

Re: Property at 6/5 Upper Grove Place, Edinburgh, EH3 8AU ("the Property")

Parties:

Mrs Karen Grant, 43 Bruntisfield Gardens, Edinburgh, EH10 4DY ("the Applicant")

Mr John Anderson, Mr Jon (otherwise Jonathan) Brown, UNKNOWN, UNKNOWN; Flat 5 2 Moffat Way, Edinburgh, EH16 4PY ("the Respondents")

Tribunal Members:

Susan Christie (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that a payment order for payment by the Respondents of £4,160.08 to the Applicant, together with interest at 2% per annum from the date of this Decision until payment, is granted.

Background

1. The application made is for an Order for payment of unpaid rent due and was made on 7 September 2020.
2. A Notice of Acceptance of the Application by the Tribunal is dated 15 October 2020.
3. The application type is made under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('the Rules').
4. Service was effected on the First Named Respondent John Anderson by way of advertisement on the First-tier Tribunal for Scotland Housing and Property Chamber website.
5. The Second Named Respondent was written to by the Tribunal by letter dated 28 October 2020, served by Sheriff Officers on 29 October 2020.
6. No written responses were received by the Respondents.

The Case Management Discussion-2 December 2020.

7. The Applicant participated and was represented by Mr Redmond Harris.
8. The Respondents did not participate. I was satisfied by the terms of the Certificate of Service by Advertisement that proper intimation had been made for the First Named Respondent. I was satisfied proper intimation had been made on the Second Named Respondent by Sheriff Officer. I proceeded in their absence.
9. The documents lodged in support of this application were examined and discussed and the Applicant's Representative made an oral submission in respect of the merits of the application, as adjusted, in respect of the sum now sought, which was for a lower figure than first claimed.
10. The Parties had entered into a Short Assured Tenancy. The initial term of which was 1 December 2016 to 30 May 2017 and continued in terms of the contract thereafter on two-monthly term until terminated.
11. The rent being £595 per calendar month to be paid every month in advance. The Respondents are jointly and severally liable for the obligations under the tenancy agreement.
12. Notices to Quit and section 33 Notices under the 1988 Act had been served asking the Respondents to leave by 1 April 2020.
13. The Respondents I am advised left the Property on 10 June 2020.
14. The Property was then recovered by the Applicant.
15. Following on from that, a trace was instructed by the Applicant through an investigation agency and a new address was obtained for the Second Named Respondent. No forwarding address was obtained for the First Named Respondent.
16. The Applicant has produced a detailed breakdown of the rent due and it details the rent payments made by the Respondents until the last payment of £200.
17. The rent due between 1 January 2017 and 10 June 2020 totalled £24,590.08. This included an apportioned rent figure due for the last 10 days of the tenancy of £195.08.
18. To be deducted from this are rent payments made of £20,430 in total. This includes the last payment made by the Respondents towards rent of £200, paid on 7 January 2020.
19. A deposit had been taken of £695 even though it had been erroneously stated to be £595 in the tenancy agreement. It was placed in an approved scheme. A brief adjournment was granted to allow the Applicant to confirm the details of the payment to her of the full deposit at the end of the tenancy. After the adjournment she confirmed that she had stated words along the lines of 'tenants now occupying the property illegally after notice given to quit. They have not paid rent and have left the property in a damaged state.' No figures were given by the Applicant to the Scheme Administrator and the whole deposit was paid over to her. She estimated that she had paid up to £10,000 to restore the property to a reasonable condition and had to replace damaged or destroyed items. She did not think she had claimed for the rent from the deposit. This seemed to be borne out by the result of the enquiry made, as no formulation of a breakdown of figures had been provided for or sought by the Scheme Administrator.

Findings in Fact

- I. The Parties had entered into a Short Assured Tenancy. The initial term of which was 1 December 2016 to 30 May 2017 and continued in terms of the contract thereafter on two-monthly term until terminated.
- II. The rent being £595 per calendar month to be paid every month in advance.
- III. The Respondents are jointly and severally liable for the obligations under the tenancy agreement.
- IV. Notices to Quit and section 33 Notices under the 1988 Act had been served asking the Respondents to leave by 1 April 2020.
- V. The Respondents left the Property on 10 June 2020.
- VI. The Property was then recovered by the Applicant.
- VII. The Respondents owe £4,160.08 of unpaid rent to the Applicant for the period up to 10 June 2020.
- VIII. The Applicant is entitled to a payment Order for unpaid rent due and owing.
- IX. An Order for Payment is granted in the sum of £4,160.08.

Reasons for Decision & Decision

The Tribunal is satisfied that the unpaid rent due and owing is £4,160.08 under the tenancy agreement between the Parties, as evidenced in the rent account produced and including the apportioned rent due up to the date the Respondents vacated the property. Once the figures had been calculated, the sum sought today was lower than the figure claimed in the initial application. An Order is granted.

The Respondents are jointly and severally liable under the tenancy agreement for any obligations.

I did not deduct the deposit sum as it did not appear that there had been any specific sum claimed for rent from it. I made it clear to the Applicant that having taken this approach, if she did decide to seek further sums from the Respondents to recoup her losses for damages or repairs, then the Respondents would be entitled to have deducted from any sum claimed the total deposit amount recovered. She accepted that.

The Applicant sought interest from the date of the decision until payment at a rate to be determined by the Tribunal. I considered 2% to be an appropriate rate, in the absence of any paperwork being produced, having regard to the potential use value of the money currently.

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.

2ndDecember2020

Legal Member/Chair

Date