



**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/18/2264

Re: Property at 3 Aberdona Mains, Alloa, FK10 3QP (“the Property”)

Parties:

**Mrs Lucy E M Poett, Harviestoun Home Farm, House of Mailer, Perth, PH2 0QA
 (“the Applicant”)**

**Mr Rory Nicoll, Mrs Lisa Nicoll, 3 Aberdona Mains, Alloa, FK10 3QP; 3
Aberdona Mains, Alloa, FK10 3QP (“the Respondents”)**

Tribunal Members:

Sarah O'Neill (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for payment by the respondents of the
sum of £9775.63 should be granted in favour of the applicant.**

Background

An application was received from the applicant on 27 August 2018 seeking a payment order brought in terms of rule 70 (Application for civil proceedings in relation to an assured tenancy under the Housing (Scotland) Act 1988) of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”).

The applicant was seeking payment of outstanding rent arrears and heating charges totalling £7577.96 from the respondents in relation to the property. The application included copies of the short assured tenancy agreement between the parties; a rent statement, showing the amount of rent outstanding as at 1 August 2018 as £5000; and outstanding heating invoices for biomass heating totalling £2577.96.

Notice of the hearing, together with the application papers and guidance notes, had been served on the respondents on 12 October 2018 by sheriff officers on behalf of the tribunal.

The First Case Management Discussion

A case management discussion was held on 30 October 2018. The respondents were not present or represented. An email had been received from Mr Nicoll the previous day, advising that the respondents were unable to attend due to illness. The tribunal was satisfied that the respondents had good reason to request an adjournment, and adjourned the case management discussion accordingly in terms of rule 18 of the 2017 rules. The tribunal issued a decision on that date, allowing amendment of the application to increase the sum sought to £9177.46, to reflect an additional two months' rent which had not been paid since the application was made.

On the same date, the tribunal issued a written direction to the respondents, requiring them to provide their full written representations together with any supporting documents they wished to rely upon at the continued case management discussion, no later than 16 November 2018. The direction and decision were sent to the respondents by recorded delivery and were delivered, having been track and trace checked. No response was received from the respondents to the direction by that date.

The Continued Case Management Discussion

A continued case management discussion was held on 18 December 2018 at STEP Stirling, Stirling Enterprise Park, John Player Building, Stirling FK7 7RP. The applicant was represented by Ms Grace Watson, solicitor, of Gillespie McAndrew. The respondents were not present and were not represented. No written representations, nor any other communications, had been received from the respondents.

The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a case management discussion had been duly complied with. It therefore proceeded with the case management discussion in the absence of the respondents.

Ms Watson asked the tribunal to grant an order for the total sum of £9775.63. This was made up of the rent arrears of £6600 as at 1 October 2018 plus outstanding heating invoices totalling £3175.63, as shown on the updated statement which had been submitted to the tribunal by Ms Watson on 30 November 2018, and sent to the respondents on 6 December 2018. She confirmed that no further rent payments had been made since the previous case management discussion. She pointed out that in his email of 29 October 2018, Mr Nicoll had indicated that the respondents had evidence which they wished to present. No such evidence had, however, been presented by the respondents.

Ms Watson confirmed that she wished to amend the application to update the sum claimed to £9755.63, which took account of two further biomass heating invoices from the applicant to the respondents dated 13 September 2018 and 25 October

2018 for the sums of £367.75 and £229.92 respectively. These were shown on the updated statement submitted by Ms Watson on 30 November 2018.

The tribunal queried on what the basis payment of the £3175.63 biomass heating invoices was being sought, as there appeared to be no mention of these in the tenancy agreement. Ms Watson conceded that this was the case, and telephoned the applicant during a short adjournment to clarify the position. Following this, she advised that the biomass central heating was part of a community heating scheme for the farm within which the property was situated, and that the respondents had previously been paying the sums invoiced to them by the applicant for this until they stopped paying the rent.

Ms Watson also confirmed that to her knowledge, the respondents were still resident within the property. A notice to quit had been served as at the time the application was made, but eviction proceedings had not yet been raised.

Findings in Fact

- The tribunal was satisfied that there was a valid short assured tenancy in place between the parties.
- As at the date of the case management discussion, the respondents owed the applicant the sum of £9775.63 in outstanding rental and biomass heating payments.

Reasons for Decision

Having considered all of the evidence before it, and in the absence of any evidence from the respondents to the contrary, despite their having been given the opportunity to provide this on several occasions, the tribunal was satisfied that an outstanding balance of rent arrears was due as at the date of the hearing in the sum of £6600.

With regard to the biomass heating invoices, the tribunal noted that appeared to be no contractual basis for these in terms of the tenancy agreement. It also noted, however, that the respondents appeared to have been paying these heating invoices before they stopped paying the rent. The respondents had been notified of the outstanding invoices previously, as these had been provided to them as part of the initial application paperwork served on them by sheriff officers. They had not disputed that these sums were due. The tribunal therefore concluded that the respondents accepted that these heating payments were due by them.

The two heating invoices dated 13 September and 25 October 2018 were addressed to the respondents, and had also been sent to them by the tribunal along with the other paperwork submitted by Ms Watson on 30 November. No representations had been received from the respondents regarding these. In the circumstances, the tribunal decided to give consent to the applicant's request to amend the application to update the sum sought for the two heating invoices dated 13 September and 25 October 2018, in terms of rule 13 of Schedule 1 to the 2017 rules. It therefore decided to make an order for payment by the respondent to the applicant of the amended sum sought.

amended sum sought.

Decision

The tribunal grants an order for payment by the respondents to the applicant for the sum of £9775.63.

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.

Sarah O'Neill

Legal Member/Chair

18/12/18

Date