

Housing and Property Chamber
First-tier Tribunal for Scotland



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 “the Act” and Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 “the Rules”

Chamber Ref: FTS/HPC/CV/18/3460

Re: Property at 57 Easter Road, Broxburn, West Lothian, EH52 5HN (“the Property”)

Parties:

Mr Scott Shaw, 5 Viewbank Road, Bonnyrigg, Midlothian, EH19 2HB (“the Applicant”)

Mr Robert Keogh, 57 Easter Road, Broxburn, West Lothian, EH52 5HN (“the Respondent”)

Tribunal Members:

Yvonne McKenna Legal Member and Leslie Forrest Ordinary Member

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent must pay the Applicant the sum of ELEVEN THOUSAND FIVE HUNDRED AND NINETY FIVE POUNDS (£11,595) STERLING in respect of rent arrears with interest thereon at the rate of 8% from today`s date.

Background

This is an application under Rule 70 of the Rules. The Applicant is seeking an Order for Payment of unpaid rent under the tenancy agreement between the parties. The application was accompanied by a copy of the written tenancy agreement between the parties with various supporting documents. The Applicant is the landlord of the Property. The Respondent is the tenant of the Property. The Tenancy Agreement provided for rent to be paid at the rate of £550 per calendar month.

In the application the Applicant stated that the Respondent has been in arrears of rent since June 2017 and that no rent has been paid in the period August 2017 to

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date. At the date of service of the notices under the Housing (Scotland) Act 1988 rent of £7655.00 was outstanding. At the service of the proceedings the sum had increased to £9365.00.

Case Management Discussion

A Hearing took place on 4th March 2019. The Applicant was represented by his Representative Mr. Chisolm of Clarity Simplicity Ltd. The Respondent did not attend. On 28th February 2019 the Respondent had submitted an e-mail to the Tribunal stating that there were several issues regarding the condition of the property and that he would be seeking legal advice. The Applicant denied the allegations generally and said that these would be challenged at the forthcoming Hearing. The level of arrears did not appear to be disputed.

Directions were issued by the Tribunal in the following terms; -

The Respondent is required to provide

1. A written statement of the grounds and reasons for the Respondent having sought to abate or withhold payment of rent during the period June 2017 to March 2019, including the sums sought to be withheld or abated during each month of the said period; and in particular details of the following issues including all dates and times when the following issues arose;(1)the heating(including what items of heating are being complained of);(2)the alleged dampness;(3)the issue of "gas safety";(4)details of the landlords attempts to sabotage any repairs including the dates of the said sabotage; and (5) the matters upon which the Respondent relies upon in respect of the landlord being unhelpful and/or lacking responsibility.

2.All documents, notes, or other records whether in electronic or written form showing (or tending to show) all communications between the Respondent (or persons acting on the Respondent`s behalf), and the Applicant (or persons acting on the Applicant`s behalf) in respect of any matters relied upon by the Respondent for either the withholding or abatement of rent during the period June 2017 to March 2019.

The Hearing

1. The Applicant attended along with his legal Representative Miss Oshodi. The Respondent did not attend. He had previously intimated that due to work commitments he would be unable to attend. He stated that he was aware that a final decision could be taken today in relation to the application. He had, following the Case Management Discussion and in advance of the Hearing today made further written representations by e-mail dated 21st March 2019. The e-mail set out issues that the Respondent contended had given rise to the withholding of rent by him and included issues with the heating to the property, dampness under a window and the absence of a gas safety certificate. He stated that the Applicant had been reluctant to have these issues resolved and that there were issues of lack of contact with the Applicant who he felt was generally unhelpful.

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2. Miss Oshodi had lodged an updated rent statement for the property which stated that the rent arrears now amounted to £11,595 and that no further sum had been paid by the Respondent. This updated rent statement had been intimated by the Tribunal to the Respondent in advance of the Hearing today. Miss Oshodi sought to amend the sum sued for to reflect this amount.

3. The Tribunal noted that there had been no agreement reached between the parties regarding the withholding of rent. Whilst there were messages between the parties by the media of WhatsApp communication none of these detailed that rent was being withheld regarding defects in the property. Further no application has been made to the Tribunal for a determination that the Applicant has failed to meet his repairing duty. The Tribunal noted that the exchange of messages between the parties were apologetic on the part of the Respondent, in relation to the non-payment of arrears of rent, with frequent promises to resolve the issue. The Tribunal took time to go through the Respondents representations in detail with the Applicant. The Tribunal accepted his evidence that there had never been an agreement reached in relation to the withholding of rent or a proportion of rent in relation to any of the issues claimed by the Respondent.

Reasons for Decision

The Tribunal accept that the rent was in arrears in the sum sought. The Bank statements of the Applicant which had been lodged reflected his evidence and the rental statement setting out the arrears. The Tribunal decided to make the order and agreed to amend the application to alter the amount sought from £9,365.00 to £11,595.00.

Decision

The Tribunal determined that the request the amend the Application should be accepted, granted the application as amended and made an Order for payment by the Respondent to the Applicant of the sum of £ 11,595.00 together with the request for interest at the judicial rate of 8% from today's date.

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.

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26/04/19

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Legal Member/Chair

Date