



**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/19/3653

Re: Property at 30 Bowmont Place, East Kilbride, G75 8YG (“the Property”)

Parties:

Mr Stephen McCahill, 31 Eden Grove, East Kilbride, G75 8XU (“the Applicant”)

**Miss Kellyanne Reid, 30 Bowmont Place, East Kilbride, G75 8YG (“the
Respondent”)**

Tribunal Members:

Neil Kinnear (Legal Member) and Frances Wood (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that**

Background

This is an application for a payment order dated 1st November 2019 and brought in terms of Rule 70 (Application for civil proceedings in relation to an assured tenancy under the 1988 Act) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant sought payment of arrears in rental payments of £6,451.46, together with any future rental arrears from the date of application until an order is granted, in relation to the Property from the Respondent. He provided with his application copies of the tenancy agreement and a rent arrears statement.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 12th December 2019, and the Tribunal was provided with the execution of service.

The Respondent sent an e-mail to the Tribunal dated 28th December 2019, in which she provided a lengthy and detailed explanation regarding the history of the tenancy, and asserted that she was withholding rent as a result of breaches of the tenancy agreement by the Applicant. She indicated that she intended to appear at the Case Management Discussion to oppose the granting of any order.

A Case Management Discussion was held on 15th January 2020 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant appeared, and was represented by Miss Barr, solicitor. The Applicant was accompanied by his wife. The Respondent did not appear, nor was she represented.

The Tribunal received a telephone call from the Respondent just before the commencement of the Case Management Discussion, explaining that she was in the centre of Glasgow in her car, and had been travelling to attend the Tribunal.

However, she had just received a telephone call from the school of one of her children, who suffers from certain disabilities, requesting that she go there immediately. In those circumstances, she would be unable to attend the Case Management Discussion, as she had to attend at her child's school.

The Tribunal explained the position to the Applicant and Miss Barr, and that in the circumstances, it would need to continue this matter to allow the Respondent an opportunity to appear. The Respondent was directed to produce at the continued calling of this application some evidence to verify that she had been contacted by her child's school and asked to attend there.

Miss Barr candidly explained that the Applicant had provided all the information which he possessed. He only had a part copy (2 pages) of the lease agreement, which was missing the page with signatures of the parties, and possibly other pages.

Miss Barr accepted that this document purported to be an assured shorthold tenancy agreement under the *Housing Act 1988*, which Act and provisions apply in England but not in Scotland, but submitted that its terms were sufficient to allow it to be treated as evidence of an assured tenancy agreement.

The Tribunal noted that there appeared to be factual dispute about the circumstances in this matter, and Miss Barr confirmed that was the case. She explained that the Applicant had been receiving treatment for a serious medical condition, and accepted that as a result had "taken his eye off the ball" with regard to administering the tenancy with regard to his obligations under it.

He was apologetic for that, and was now in the process of attending to and rectifying his administrative failings, including having gas and electrical safety checks carried out, lodging the tenancy deposit with an approved scheme, and renewing his entry on the landlord's register.

Miss Barr explained that the Applicant's position was that he had been unable historically to have checks and repairs made in some cases because alleged faults had never been reported to him, and in others as a result of difficulties in arranging access to the Property with the Respondent.

Miss Barr lodged confirmation of the lodging of the tenancy deposit with an approved scheme, confirmation that checks had been arranged, and a photograph of the back garden of the Property said to show marked deterioration in its condition.

There was clearly a sharp disagreement on the facts in this matter. Accordingly, the Tribunal set a Hearing to take evidence on these points in order to make a determination.

The Tribunal reminded the Parties that any further productions which they intended to use at the Hearing should be lodged no later than 7 days in advance of the Hearing date, and that they should also lodge a list of witnesses no later than 7 days in advance of the Hearing date.

Hearing

A Hearing was held on 18th February 2020 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant appeared, and was represented by Miss Barr, solicitor. The Applicant was accompanied by his wife. The Respondent appeared, and was not represented. The Respondent was accompanied by her friend, Miss Dougall.

Miss Barr lodged a rent arrears statement updated to the date of the Hearing, indicating that current arrears were £10,031.46. The Respondent confirmed that she did not object to the statement being lodged.

The Respondent confirmed at the outset of the Hearing that she accepted that £6,500.00 of the sum sought in this application was due. She indicated that she was prepared to confirm that the deposit of £895.00 could be released to the Applicant. She did not accept the balance of the sum sought.

The Tribunal then heard evidence from the Applicant and his wife in support of the full sum sought in this application. At the conclusion of their evidence, the Respondent advised the Tribunal that having now heard the evidence, she did not intend to dispute this application, and accepted that an order should be made against her for the full amount sought of £10,031.46.

The Tribunal explained to the Respondent that the effect of her concession would be that the Tribunal would make an order against her for the full sum sought, which might be enforced by the Applicant. She confirmed that she understood that, and was content for that to happen.

The Tribunal also explained to the Respondent the possibility of her seeking time to pay. She indicated that she did not wish to do so, as she had insufficient free income to offer any amount of instalments, no matter how small.

Miss Barr then invited the Tribunal to make an order for £10,031.46, and asked the Tribunal to award expenses against the Respondent on the basis that the Respondent had acted unreasonably in putting the Applicant to a Hearing. The Respondent opposed the awarding of expenses against her.

Statement of Reasons

Section 16 of the *Housing (Scotland) Act 2014* provides as follows:

16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3) Part 1 of schedule 1 makes minor and consequential amendments.”

Accordingly, the Tribunal now has jurisdiction in relation to claims by a landlord (such as the Applicant) for payment of unpaid rental against a tenant (such as the Respondent) under an assured tenancy such as this.

The Tribunal considered the terms of the short assured tenancy agreement, the copy updated rent arrears statement, Miss Barr's submissions, and the Respondent's concession, and was satisfied that this disclosed an outstanding balance due by the Respondent to the Applicant in respect of rent arrears of £10,031.46.

Miss Barr asked the Tribunal to make an award of expenses in favour of the Applicant at the conclusion of the Hearing.

In terms of Rule 40 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, the Tribunal may award expenses against a party, but only where that party through unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense.

It is undoubtedly the case that the Respondent has put the Applicant to significant expense in this application, and the Tribunal can well understand why Miss Barr sought an award of expenses.

The Tribunal does not consider that such expense was caused by unreasonable behaviour by the Applicant in the conduct of her case. She did put the Applicant to a proof of his case at a Hearing, and then withdrew her defence at the conclusion of the evidence led on his behalf.

However, the Respondent at the outset of the Hearing confirmed that she accepted a total of £7,395.00 in rent arrears was due by her to the Applicant, and only contested the remaining £2,636.46. She then, after hearing the Applicant's evidence, withdrew

her defence, as opposed to leading evidence of her own to rebut that balance being due.

In those circumstances, the Tribunal does not think the Respondent's behaviour could be deemed as unreasonable in the conduct of her case. Indeed, the Respondent could have put the Applicant to further expense if she had chosen to lead evidence on her own behalf.

In those circumstances, the Tribunal does not consider it appropriate to make an award of expenses against the Respondent in this application, and does not do so.

Decision

In these circumstances, the Tribunal will make an order for payment by the Respondent to the Applicant of the sum of £10,031.46.

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.

Neil Kinnear

Legal Member/Chair

18/02/20

Date