



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/23/0206

Re: Property at 14 Cant Crescent, St Andrews, KY16 8NF (“the Property”)

Parties:

George Black, 90 Lawmill Gardens, St Andrews, KY16 8QZ (“the Applicant”)

Muzhat Isobel Khan, The Granary, West Balgarvie, Cupar, KY15 4NE (“the Respondent”)

Tribunal Members:

Joel Conn (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 in the sum of £23,760 be granted against the Respondent.

Background

- 1) This was an application by the Applicant for civil proceedings in relation to an assured tenancy in terms of rule 70 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”), namely an order for payment of rent arrears. The tenancy in question was an Assured Tenancy (said to be a Short Assured Tenancy) of the Property by the Applicant to the Respondent commencing on 1 March 2012.
- 2) The application was dated 20 January 2023 and lodged with the Tribunal on that date. The application sought payment of arrears of £24,735 due to the termination of the Tenancy on 30 April 2021. The application was accompanied by a rent statement showing missed and irregular rental payments for a number of years, but with arrears climbing in particular from May 2019 when they approximately double in around 16 months. The lease for the Tenancy accompanied the application and it detailed a rental payment of £975 payable

in advance on the 1st of each month. The application further contained copy letters agreeing lease extensions and rent increases, with the last two being rent increases to £1,420 a month from 2 June 2019; and £1,450 a month from 2 June 2020.

- 3) On the morning of the case management discussion (“CMD”), the Respondent emailed seeking a postponement due to the need to attend a medical appointment at 14:30. Further information was sought from her as to the reason for the appointment, and whether it was an emergency appointment, as well as details as to her position in regard to the application (and thus why she wished a postponement to attend).
- 4) In regard to the appointment, the Respondent confirmed the appointment was to review recent tests, and it had been set by her clashing with the CMD in error due to her booking the appointment with a mistaken recollection of the date and time of the CMD. In regard to her reason for wishing to attend the CMD, the Respondent emailed in the following submissions (abbreviated from the original):

I am not saying I do not owe Mr Black who was my landlord of the property.

I moved out of the property as I could not afford the rent...

I moved to a property £400 less than what I was paying...

I know Mr Black has every right to demand his money...

I looked after the property and garden like my own and I am confident in saying I improved the value of the house by £20000 to £25000 by decorating, new floorings and carpets, with modern decor in every room and new blinds, for when Mr Black who has since sold the property.

I have 3 children depending on me and a husband that is registered disabled

I hope we can come to a sensible agreement until I benefit from income from my children to help me out of this mess (all sic)

The Hearing

- 5) The matter called for a CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 20 March 2023 at 14:00. I was addressed by the Applicant’s solicitor, Iain Buchan, Thorntons. There was no appearance from the Respondent, per her emails.
- 6) I sought the Applicant’s agent’s view on the request for the postponement. He took no issue with the medical basis for the request but, in light of the details as to the Respondent’s position, objected to a postponement on the grounds that no defence was disclosed. The Applicant’s agent noted that the Respondent

conceded that she was in arrears, and her comments regarding improvements to the Property were at best an unjust enrichment claim which would be a non-contractual claim requiring to be raised separately. Insofar as the Respondent may seek a Time to Pay direction, none was formally lodged and he doubted a reasonable offer could be made given the size of the arrears.

- 7) I considered that the Respondent had received clear intimation of the CMD from Sheriff Officers and accepted that she had booked her date and time of the appointment in error. I further considered the terms of her email and that, regardless of the merits of its content, she had provided written submissions on her position. Further, though it may not have been convenient for her, it was not clear why she was not able to join the call at 14:00 even for a restricted time. In all the circumstances, having not commenced the CMD until around 14:05, I was satisfied to consider the application in the Respondent's absence and refused the postponement.
- 8) At the CMD, the Applicant's agent confirmed that the application was still insisted upon, that there had been no payments against the arrears, and that the sum sought remained £24,735. I noted that the Tenancy Agreement (and the letters regarding the increase in rent) all referred to a deposit of £975 having been received and retained, yet there was no mention of whether it had been uplifted and applied against the sum sought. In the circumstances, the Applicant's agent moved to restrict the sum sought to £23,760, on the basis that if he identified that the deposit had since been applied this would be the correct arrears figure and, if the deposit remained held by a tenancy deposit scheme provider, it could be sought from there and, if necessary, a further application sought from this Tribunal for any balance (if the Applicant was unsuccessful in recovering in from the provider).
- 9) The Applicants' agent moved for interest at 4% above the Royal Bank of Scotland base rate, being the contractual interest rate. This rate was sought from the date of the decision. No motion was made for expenses.

Findings in Fact

- 10) On 17 January 2012 the Applicant let the Property as an Assured Tenancy (said to be a Short Assured Tenancy) to the Respondent under a lease with commencement on 1 March 2012 until 1 March 2013 ("the Tenancy").
- 11) In clause 2 of the Tenancy Agreement, the Respondent required to pay rent of £975 a month in advance on the 1st day of each month.
- 12) In clause 21 of the Schedule of Conditions to the Tenancy Agreement, the Respondent agreed to pay interest at 4% above the base rate from time to time of Royal Bank of Scotland on any overdue payments.
- 13) In clause 3 of the said Schedule, the Respondent undertook obligations towards keeping the Property and its furnishings in a good and clean condition.

- 14) The Applicant offered an extension of the Tenancy on 17 May 2019 from 2 June 2019 but on a rent of £1,420 a month. The Respondent accepted this extension.
- 15) The Applicant offered an extension of the Tenancy on 1 June 2020 from 2 June 2020 but on a rent of £1,450 a month. The Respondent accepted this extension.
- 16) The Tenancy was terminated by mutual consent on 30 April 2021.
- 17) Rent arrears as of 30 April 2021 amounted to £24,735, being the equivalent of 11 months unpaid rent from 2 June 2020 at £1,450 and over 6 months unpaid rent at £1,420 in the year proceeding.
- 18) On 20 January 2023, the Applicant raised proceedings against the Respondent for an order for payment of the rent arrears of £24,735 for rent due to 30 April 2021.
- 19) On 18 April 2023, the Tribunal intimated to the Respondent the date and time of the CMD of 22 May 2023 by Sheriff Officer.
- 20) The Respondent provided no evidence of payment of any part of the said unpaid rent of £24,735 for the period to 30 April 2021.

Reasons for Decision

- 21) The application was in terms of rule 70, being an order for civil proceedings in relation to an assured tenancy. I was satisfied, on the basis of the application and supporting papers, that rent arrears of £24,735 were due for the period to 30 April 2021 and remained outstanding as of today subject to whether the deposit of £975 had yet been applied.
- 22) The Respondent did not dispute the arrears, as per her email. Her comments regarding improvements to the Property are not a defence. If her work and purchases were not contractually required by her in regard to her obligations under the Tenancy Agreement, they either acceded to the Property or were hers to remove (and she chose not to remove them). I cannot see a basis for "improvements" under the Tenancy Agreement as set out by the Respondent and see no need to delay determination of the application to obtain further information. I was thus satisfied that the necessary level of evidence for these civil proceedings had been provided, particularly when the Applicant conceded to seek a reduced sum of £23,760 at this time, in light of not being aware whether or not the deposit remained to be applied.
- 23) The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. I was thus satisfied to make a decision at the CMD to award the sum of £23,760, with interest at 4% above Royal Bank of Scotland base rate from today's date. This award is without prejudice to any

adjudication under the tenancy deposit scheme regulations, or any further application, should the deposit remain outstanding and still to be addressed.

Decision

- 24) In all the circumstances, I was satisfied to make the decision to grant an order against the Respondent for payment of £23,760 plus interest at 4% above the Royal Bank of Scotland base rate, from 22 May 2023 until payment.

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.

Joel Conn

22 May 2023

Legal Member/Chair

Date