



**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/19/0716

Re: Property at 5G Kings Court, Ayr, KA8 0AD (“the Property”)

Parties:

Mr Andrew Currie, 176 Carnshalloch Avenue, Patna, Ayrshire, KA6 7NS (“the Applicant”)

Ms Beverly Gibson, 29 Macadam Place, Ayr, KA8 0BZ (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision (in absence of the Respondent)

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

Background

This is an application for a payment order dated 4th March 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 £2,601.27 in relation to the Property from the Respondent, and provided with his application copies of the short assured tenancy agreement, form AT5, two bank statements and a print-out from the local authority of certain payments it had made.

The short assured tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

The Applicant also indicated that the rent arrears figure outstanding had increased since the date of his application, and the figure was now significantly higher.

The Tribunal explained that it considered that it could not properly grant an order against the Respondent in her absence for a sum which is more than that sought in the application form.

The Tribunal explained that the Applicant was allowed to amend his application in terms of Rules 13 and 14 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended to the greater sum which he is now seeking.

The Applicant indicated that he would wish to provide a written amendment to the Tribunal in which he would seek to increase the sum sought to the figure which will be due as at the date of the next Case Management Discussion upon the hypothesis that the Respondent makes no further payments by that date.

The Tribunal adjourned this application to a further date to allow the Applicant to provide the above information, and to allow him to provide it with a written amendment increasing the sum sought to the figure which will be due as at the date of the next Case Management Discussion. It also issued the Applicant with a Direction to this effect for his guidance.

A continued Case Management Discussion was held on 26th June 2019 at Russell House, King Street, Ayr. The Applicant again did not appear, but was again represented by his friend Gregory Edward Foster. The Respondent again did not appear, nor was she represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

Mr Foster advised the Tribunal that he could again contact the Applicant on his mobile phone to speak to him and obtain any details the Tribunal required.

The Tribunal was content for Mr Foster to telephone the Applicant and proceed with the Case Management Discussion with the Applicant participating on speaker-phone, and Mr Foster proceeded to do so.

The Tribunal noted that the Applicant had complied with its Direction and provided a rent arrears statement together with relevant bank statements. It noted that one benefit payment for £262.70 for the period 23rd July to 12th August 2018 shown in the bank statements appeared to have been omitted from the amounts shown as paid in the rent arrears statement, and the Applicant confirmed he would check the rent arrears statement and provide a revised copy.

The Applicant advised the Tribunal that the Respondent had returned the keys to the Property to the him at the end of May 2019, and that he had regained possession of the Property thereafter. The Respondent was not living at the Property anymore, and the Applicant did not have a current address for her.

The Tribunal after enquiry confirmed also that the instruction to intimate to the Respondent this continued Case Management Discussion occurred prior to its

receipt of the material supplied in terms of its Direction, and that the Respondent had not had the increased sum sought intimated to her.

The Tribunal explained that it considered that it could not properly grant an order against the Respondent in her absence for a sum which is more than that sought in the application form, and explained that the Applicant was allowed to amend his application in terms of Rules 13 and 14 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended to the greater sum which he is now seeking.

However, if the Applicant was unable to provide the Tribunal with a current address for the Respondent, then the Tribunal would be unable to intimate the amendment to the sum sought to the Respondent.

The Tribunal also explained that any order it made today for the sum originally sought in this application would have to design the Respondent as formerly residing at the Property, and whose current whereabouts are unknown.

The Applicant indicated that he wished to attempt to obtain a current address for the Respondent, in order that the Tribunal could intimate the increased sum sought to the Respondent, and so that it could make any order against her designating her at her current address.

The Tribunal was content to adjourn this application to a further date to allow the Applicant to do this, to allow him to provide it with a written amendment and corrected rent arrears statement increasing the sum sought to the figure which will be due as at the date of the next Case Management Discussion, and to allow him to ask the Tribunal to intimate that amendment to the Respondent.

The Applicant subsequently obtained a current address for the Respondent, and provided that address to the Tribunal. The Respondent was validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 12th September 2019, and the Tribunal was provided with the execution of service.

A further continued Case Management Discussion was held on 15th October 2019 at Russell House, King Street, Ayr. The Applicant again did not appear, but was again represented by his friend Gregory Edward Foster. The Respondent again did not appear, nor was she represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal noted that since the previous Case Management Discussion, the Applicant had provided it with a current address for the Respondent, but he had not provided it with a written amendment and corrected rent arrears statement increasing the sum sought to the figure which will be due as at the date of the next Case Management Discussion, and had not intimated that to the Respondent.

Mr Foster advised the Tribunal that he could again contact the Applicant on his mobile phone to speak to him and obtain any details the Tribunal required.

The Tribunal was content for Mr Foster to telephone the Applicant and proceed with the Case Management Discussion with the Applicant participating on speaker-phone, and Mr Foster proceeded to do so.

Mr Foster confirmed that he had investigated the apparent discrepancy in the rent arrears statement. He confirmed that the figure was in fact correctly stated. The confusion had been caused by the fact that the benefit payment for £262.70 for the period 23rd July to 12th August 2018 shown in the bank statements was one which appeared in the rent arrears statement, but the dates did not match up due to a substantial delay in payment. The Tribunal was satisfied with that explanation.

The Tribunal explained that it could only grant an order for the figure currently sought in the application of £2,601.27 today. If it did so, then the Applicant was free, if he wished, to bring a further application for the balance shown in the rent arrears statement of £1,488.00.

Alternatively, the Tribunal would be content to continue this matter on one further occasion to allow the Applicant, or Mr Foster on his behalf, to e-mail the Tribunal asking it to amend the sum sought in the application to the increased figure of £4,089.27, and to send a copy of that request to the Respondent by recorded delivery post or to serve by sheriff officer.

In that event, the amendment would need to be sent to the Tribunal and the Respondent, and be received by both no later than 14 days prior to a further Case Management Discussion.

The Tribunal explained that this requirement regarding amendment was to comply with the terms of Rule 14A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant initially wished to ask the Tribunal to follow the first option i.e. to grant an order today, but after the call ended, Mr Foster asked the Tribunal to explain the procedure required to bring a fresh application for the balance.

Once Mr Foster understood the procedure, he concluded that the Applicant, if he had understood what was involved, would have wished to seek a continuation of this case to allow him to amend the sum sought, and Mr Foster asked the Tribunal to do that.

Rule 28 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended allows the Tribunal discretion on its own initiative or on an application by a party, to adjourn a hearing.

For the above reason, the Tribunal adjourned the continued Case Management Discussion and set a further Case Management Discussion to allow the Applicant to amend the figure sought in his application, and to intimate that amendment to both the Tribunal and the Respondent.

The Applicant subsequently e-mailed the Tribunal on 21st October 2019 intimating an amendment to the sum sought in this application to the figure of £4,089.27, and

stated that Mr Foster was sending a recorded delivery letter to the Respondent intimating the amendment to her.

Continued Case Management Discussion

A further continued Case Management Discussion was held on 12th December 2019 at Russell House, King Street, Ayr. The Applicant again did not appear, but was again represented by his friend Gregory Edward Foster. The Respondent again did not appear, nor was she represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal confirmed with Mr Foster that he had sent a recorded delivery letter to the Respondent intimating the amendment to the sum sought, as the Applicant had stated in his e-mail. Additionally, the Tribunal itself had sent to the Respondent by letter dated 24th October 2019 a copy of the amendment request contained in the Applicant's e-mail.

The Tribunal had also intimated the time, date and location of this continued Case Management Discussion to the Respondent by letter dated 8th November 2019.

Mr Foster invited the Tribunal with reference to the application and papers to grant an order for payment of £4,089.27, and confirmed that the Applicant had received no further payments from the Respondent since the last continued Case Management Discussion.

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 a short assured tenancy such as this.

The Tribunal considered the terms of the short assured tenancy agreement, the copy rent arrears statements provided, and Mr Foster's submissions, and was satisfied that this disclosed an outstanding balance of rent arrears in the sum of £4,089.27. Accordingly, the Tribunal shall make an order for payment of that sum.

Decision

In these circumstances, the Tribunal will make an order for payment by the Respondent to the Applicant of the sum of £4,089.27.

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.

N Kinnear

12/12/19

Legal Member/Chair

Date