

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 Rule 70 of The First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

Chamber Ref: FTS/HPC/CV/18/0321

Re: Property at 41 Church Court, Ayr, KA8 0DB ("the Property")

Parties:

Miss Muriel McNicol, residing at 71 Highpark Road, Coylton, Ayrshire, KA6 6QL ("the Applicant")

Mr Ian McEwan, 94 Regent Court, Aberdeen, AB24 1ZS ("the Respondent")

Tribunal Members:

Virgil Crawford (Legal Member)

Decision in absence of the Respondent

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

BACKGROUND

1. By way of a lease dated 17th and 22nd December 2015 the Respondent agreed to lease the Property from the Applicant.
2. The rent to be paid was in the sum of £330 per calendar month.
3. The Respondent was also required to make payment of a deposit in the sum of £330. Only £27 was paid by way of a deposit. This sum has been retained by the Applicant.
4. The Respondent began falling in to arrears of rent from 2nd May 2016.
5. The Respondent vacated the Property, and therefore ended the tenancy, on 15th October 2017.
6. In the period from 2nd May 2016 until 15th October 2017, the arrears of rent amounted to £2,996.00. This is the amount claimed by the Applicant.

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THE CASE MANAGEMENT DISCUSSION

7. The Applicant attended the case management discussion. She was accompanied by her partner, Jean Cowan. In accordance with Rule 11 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Tribunal rules") the Tribunal allowed Ms Cowan to be present as a supporter but she did not participate in the proceedings.
8. The Respondent did not attend the case management discussion. The proceedings and the date, time and place of the case management discussion had been intimated to him by sheriff officers on 4th May 2017.
9. In terms of Rule 29 of the Tribunal rules, the Tribunal, being satisfied that the terms of Rule 24 of the Tribunal rules (requiring notice of the proceedings to be given to each party) had been complied with, proceeded with the case management discussion in the absence of the Respondent.
10. The Applicant requested that, in the event of the Tribunal making an order for payment, interest be ordered to run on any amount due. The Tribunal refused this request.
11. The Applicant advised that her address was now 71 Highpark Road, Coylton, Ayrshire, KA6 6QL

FINDINGS IN FACT

12. The following findings in fact were made:-
 - i. That the Applicant was the landlord of the property and the Respondent was the tenant in the period from 22 December 2015 until 15 October 2017;
 - ii. That rent was due to be paid by the Respondent to the Applicant in the amount of THREE HUNDRED AND THIRTY POUNDS (£330.00) per calendar month;
 - iii. That the Respondent was required to make payment of a deposit in the amount of THREE HUNDRED AND THIRTY POUNDS (£330.00). Only TWENTY SEVEN POUNDS (£27.00) was paid by way of a deposit;
 - iv. The deposit funds have been retained by the Applicant. In terms of the lease these funds may be applied towards any sum due to the Applicant by the Respondent at the termination of the tenancy;
 - v. As at 15th October 2017 the Respondent was in arrears of rent in the sum of TWO THOUSAND NINE HUNDRED AND NINETY SIX POUNDS (£2,996.00);
 - vi. The amount outstanding after deducting the TWENTY SEVEN POUNDS retained by the Applicant in relation to the deposit funds paid is TWO THOUSAND NINE HUNDRED AND SIXTY NINE POUNDS (£2,969.00).

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REASONS FOR DECISION

13. Sums lawfully due by the Respondent to the Applicant are outstanding and, accordingly, an order for payment is appropriate.
14. In relation to the Applicant's request for interest to be applied to any order for payment, this was refused for the following reasons:-
- i. The Applicant did not request that interest be applied to any amount due when she presented her application to the Tribunal;
 - ii. In terms of Rule 14(1) of the Tribunal rules, the Applicant was entitled to amend her written representations at any time up to 7 working days before the case management discussion. No such application for amendment had been made;
 - iii. In terms of Rule 14 of the Tribunal rules, the Applicant was entitled to seek to amend her application thereafter with the consent of the Tribunal. If made at the case management discussion, however, in terms of Rule 14(2) of the Tribunal rules, the application must be stated orally in the presence of any other party and noted by the Tribunal;
 - iv. The Respondent was not present at the case management discussion. He had been given no notice in advance of the case management discussion that such an application to amend might be made. In the circumstances, the Tribunal could not allow the amendment sought.

DECISION

An order is made that the Respondent make payment to the Applicant in the amount of TWO THOUSAND NINE HUNDRED AND SIXTY NINE POUNDS (£2,969.00) STERLING

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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Legal Member/Chair

4th June 2018
Date