

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 (“2014 Act”)

Chamber Ref: FTS/HPC/CV/19/0241

Re: 4 St Serfs Place, Dysart, Fife, KY1 2SY (“the Property”)

Parties:

Mr Girish Patel, 1 Cornwall Road, Hatchend, Pinner, Middlesex, HA5 4LP (“the Applicant”)

Mr Alan Carmichael, 4 St Serfs Place, Dysart, Fife, KY1 2SY (“the Respondent”)

Tribunal Members:

Pamela Woodman (Legal Member)

Present:

The case management discussion in relation to case reference FTS/HPC/CV/19/0241 took place at 2.00pm on Friday 29 March 2019 at Fife Voluntary Action, 16 East Fergus Place, Kirkcaldy, KY1 1XT (“the CMD”). The Applicant was not present at the CMD but was represented by Mark MacDonald (“Mr MacDonald”) of Fife Letting Service (“Applicant’s Representatives”). The Respondent was not present, nor was he represented, at the CMD. The clerk to the Tribunal was Vicki Hammill.

Decision (in absence of the Respondent)

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

BACKGROUND

1. An application was made to the Tribunal under section 16 of the 2014 Act for civil proceedings in relation to matters associated with a tenancy under the Housing (Scotland) Act 1988 (“1988 Act”). The application was made in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“HPC Rules”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended, (“2017 Regulations”). More specifically, the application was made in

terms of rule 70 (*Application for civil proceedings in relation to an assured tenancy under the 1988 Act*) of the HPC Rules.

2. A notice of acceptance of the application was issued by the Tribunal dated 20 February 2019 under rule 9 of the HPC Rules ("**Notice of Acceptance**"), which confirmed that the application paperwork had been received by the Tribunal on 23 January 2019.
3. The Respondent and the Applicant's Representatives were each respectively sent a letter by the Tribunal dated 7 March 2019 confirming that the application had been received, intimating the date, time and place of the CMD and noting that written representations from the Respondent must be received by 25 March 2019.
4. The Legal Member was provided with a certificate of service from David Garry Forbes, sheriff officer of Hannah's, stating that the letter from the Tribunal was served on the Respondent on 8 March 2019 by depositing it at the Property by means of a letterbox. The Legal Member was satisfied, on the balance of probabilities, that the Respondent had been given notice of the CMD as required in terms of rule 24 of the HPC Rules and that the CMD could proceed to be heard in the absence of the Respondent in terms of rule 29 of the HPC Rules.
5. The Tenancy Agreement stated that:
 - a. The commencement date was 2 October 2017;
 - b. The initial period terminated on 2 April 2018;
 - c. If the Tenancy Agreement was not brought to an end on 2 April 2018, it would continue thereafter from calendar month to calendar month until terminated by either party in terms of clause 11 of the Tenancy Agreement;
 - d. The monthly rent was £400, payable monthly in advance on the 2nd of each month; and
 - e. The Respondent was to pay a tenancy deposit of £400 on or before the commencement date.

PROCEEDINGS

6. Mr MacDonald confirmed that there had been no communication from the Respondent in relation to the CMD or as to why he had failed to pay rent. He believed that the Respondent may have changed jobs. He also stated that the Respondent had asked to make a payment plan in relation to the arrears but there had been no further communication from him about that.
7. Mr MacDonald confirmed that the current arrears of rent were £3,300 and that, as of Monday (namely 1 April 2019), they would be £3,700. He confirmed that no payment of rent had been made since 15 June 2018.

FINDINGS IN FACT AND REASONS FOR DECISION

8. The Applicant is the registered proprietor of the Property. It is registered under title number FFE38057.
9. In terms of the Tenancy Agreement, the Respondent was obliged to pay rent at the rate of £400 per calendar month in advance on the 2nd of each month.
10. In the absence of any written representations or attendance at the CMD by the Respondent, the Legal Member had no information to suggest that the arrears of rent detailed in the rent payments schedule provided with the application paperwork were not due and payable. The rent payments schedule covered the period from 15 January 2018 to 2 January 2019 and stated that there were arrears of rent of £2,500 as at 2 January 2019. The Legal Member noted that, as at 11 June 2018, there had been a nil balance but that there were stated arrears continually from 2 July 2018 onwards. The Legal Member was satisfied, on the balance of probabilities, that the Respondent was in arrears of rent in the amount of £2,500 as at 2 January 2019.
11. The Applicant had not made an application in terms of, and as provided for in, rule 14A of the HPC Rules to amend the sum sought.

DECISION

12. The Tribunal decided that an order be granted in favour of the Applicant against the Respondent for payment of the sum of £2,500 (two thousand five hundred pounds) sterling.
13. The order referred to in the preceding paragraph was intimated orally to Mr MacDonald during the CMD.

Right of Appeal

In terms of Section 46 of the Tribunals (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.

P Woodman

Legal Member

29 March 2019

Date