

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/20/0321

Re: Property at 35 Inchgarvie Park, Edinburgh, EH30 9RN (“the Property”)

Parties:

Ms Lorraine Fleming, 13 Springfield View, South Queensferry, Midlothian, EH30 9RZ (“the Applicant”)

Mr Graham Murray, Ms Jenna Hastie, 34 Cotlaws, Kirkliston, EH30 9DR; 34 Cotlaws, Kirkliston, EH30 9DR (“the Respondents”)

Tribunal Members:

Lynsey MacDonald (Legal Member)

Decision (in absence of Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment in the sum of £9,861.87 should be granted.

1. Background

1.1. The Applicant sought an order for payment in respect of rent arrears.

1.2. This was a continued Case Management Discussion, the earlier Case Management Discussion having been continued to allow the Respondents time to consider their position and in particular to seek legal advice.

2. The Case Management Discussion

2.1. The Applicant did not personally attend the Case Management Discussion, but was represented by Ms Caldwell, Solicitor.

2.2. Neither Respondent attended the Case Management Discussion.

2.3. The Applicant invited the Tribunal to proceed in the absence of the Respondents. The Tribunal was satisfied that the requirements of Rule 17(2) had been met, namely that the Respondents had been given reasonable notice of the

date, time and place of the continued Case Management Discussion, and had wilfully failed to attend the continued Case Management Discussion. The Tribunal had previously informed the First Respondent of the requirement to attend the continued Case Management Discussion, and considered that it was fair to proceed in the absence of the Respondents.

2.4. There was an outstanding motion to amend the sum sought to £9,861.87, this having been continued from the previous Case Management Discussion. This sum represented rent arrears to 30th September 2020. This motion had been intimated to the Respondents in advance of the previous Case Management Discussion.

2.5. The Applicant invited the Tribunal to grant a motion to amend the sum sought to £10,506.87. This sum represented outstanding rent to 31st October 2020, the rent in respect of October having fallen due on 1st October 2020. This motion had been intimated to the Respondents in advance of this continued Case Management Discussion.

3. Findings in Fact

3.1. The Respondents entered into a tenancy agreement with the Applicant on 8th September 2010. The tenancy was due to end on 13th March 2011, but allowed for monthly continuation, and termination with two months' notice.

3.2. The short assured tenancy ended on 13th August 2019, after valid service of the required notices.

3.3. The Respondents left the property to live at another address, but continued to store belongings at the property. The Respondents did not return the keys for the property to the Applicant.

3.4. On 30th September 2020, the sum of £9,861.87 was owed by the Respondents to the Applicant in respect of rent arrears.

4. Reasons for Decision

4.1. At the previous Case Management Discussion the First Respondent accepted that there was a substantial sum owed to the Applicant in respect of rent arrears. At that time he was unable to say whether the amount claimed by the Applicant was correct as he had not had any opportunity to consider the rent statement (the documents not having been received by him until very shortly before that Case Management Discussion).

4.2. No additional information had been placed before the Tribunal by the Respondents since the previous Case Management Discussion, and there was therefore nothing challenging or disputing the Applicant's assessment of the amount of rent arrears.

4.3. The Applicant confirmed that since the previous Case Management Discussion there had been no contact from the Respondents, and no further payments in respect of rent.

4.4. The Tribunal accepted that as at 30th September 2020, the sum of £9,861.87 was owed by the Respondents to the Applicant in respect of rent arrears.

4.5. The Tribunal considered that it was reasonable to grant the motion to amend the sum sought to £9,861.87, the Respondents having been given due notice of same.

4.6. The Tribunal accepted that under the tenancy agreement rent was payable in advance, and *prima facie* the rent payment for October 2020 was due to be paid on 1st October 2020. However, on 7th September 2020, the Tribunal had granted an order for possession of the property, and that order for possession could be executed on 9th October 2020. It was therefore anticipated that the Respondents would be removed from the property imminently. The Tribunal did not consider that it was reasonable to grant the second motion to amend the sum sought to £10,506.87.

5. Decision

5.1. The Applicant's motion to amend the sum sought to £9,861.87 is granted.

5.2. The Applicant's motion to amend the sum sought to £10,506.87 is refused.

5.3. An order for payment is granted in the amount of £9,861.87.

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.

L MacDonald

07/10/20

Legal Member

Date

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Legal Member/Chair

Date

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