

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

Chamber Ref: FTS/HPC/CV/19/0014

Re: Property at Flat 1, 8 Murrayshall Road, Perth, PH2 6QT (“the Property”)

Parties:

Mr David McCleary, c/o 45 King Street, Perth, PH2 8JB (“the Applicant”)

Mr Brian Rodgers, 1b Campsie Road, Perth, PH1 2NW (“the Respondent”)

Tribunal Members:

Mary-Claire Kelly (Legal Member) and Ann Moore (Ordinary Member)

Decision in absence of the Respondent

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an Order for Payment in the sum of TWO THOUSAND THREE HUNDRED AND EIGHTY SEVEN POUNDS AND EIGHTY PENCE (£2387.80) in favour of the applicant.

Background

1. By application dated 27th November 2018 the applicant sought an order for payment in respect of unpaid arrears of rent.
2. The applicant’s representative had lodged with the application a copy lease, form AT5, copy tenant information pack and a copy rent account.
3. At a previous Case Management Discussion (“CMD”) on 4th March 2019, the respondent was personally present. He was advised that a hearing would take place on 29th April 2019 at the Inveralmond Business Centre, Perth. On 2nd April 2019 the Tribunal served a copy of the CMD note confirming the hearing date and a Notice of Direction on the respondent by first class recorded delivery post. The Tribunal was satisfied that the respondent had been given

proper notice of the hearing in terms of Rule 24.1 and proceeded with the hearing in the respondent's absence.

Previous CMDS

4. Two previous CMDs had taken place. At the first CMD on 26th February 2019, the application was amended to allow the applicant to seek an order for payment in the sum of £2387.80. The respondent was not present and the CMD was adjourned for the amendment to be intimated.
5. At the second CMD on 29th March 2019 the respondent attended. Parties agreed a figure for the outstanding rent of £2387.80. The respondent sought to defend the application on the basis that he was not liable for full payment of the rent due to the applicant's failure to renew the gas safety certificate in respect of the property after it had expired on 31st January 2018. The respondent was advised to seek representation in relation to the case.
6. A hearing was fixed and a Notice of Direction issued to the applicant. In terms of the Direction the respondent required to lodge a written note setting out the basis of his defence prior to the hearing. No such note was lodged.

The Hearing

7. The applicant's representative, Ashleigh McIntosh, Lettings Negotiator from Premier Properties, Perth attended the hearing. Alan Keddie, Director of Premier Properties also attended.
8. The applicant's representative confirmed that the applicant sought an order in the sum of £2387.80 in respect of unpaid rent.
9. The applicant's representative produced a copy of the gas safety certificate in respect of the property. The certificate was dated 31st January 2017 and accordingly expired on 31st January 2018.
10. The applicant's representative confirmed that Premier Properties managed 350 properties. They had a set procedure for dealing with gas safety requirements. She advised that they were aware of the Landlord's statutory duties to ensure that a tenanted property had a valid gas safety certificate. The company kept a record of when certificates were due to expire and contacted tenants prior to that date. Tenants were provided with the telephone number of the company's preferred gas engineer and asked to make direct

contact with him to arrange a suitable time. If no such arrangement was made the practice of the company was to telephone tenants to remind them to make the necessary arrangements.

11. Mr Keddie confirmed the company's procedure in relation to gas safety certificates. He advised that the respondent had been an acquaintance of his prior to taking on the tenancy. Mr Keddie advised the Tribunal that as he knew the respondent he had a number of informal conversations with him when he met him in Scone during the course of the tenancy. Mr Keddie advised the Tribunal that he had asked the respondent to allow access for the gas safety inspection. He had also asked the respondent to pay the outstanding arrears. As well as informal conversations Mr Keddie had text messaged the respondent on a number of occasions regarding the outstanding arrears.
12. Both Mr Keddie and Ms McIntosh advised that Premier Properties had a facility on the company website which allowed tenants to report any outstanding repairs issues. Ms McIntosh had checked the system and advised that no repairs had been reported by the respondent throughout the duration of the tenancy.
13. Both Mr Keddie and Ms McIntosh advised the Tribunal that contrary to the respondent's position at the last CMD he had continued to use the heating and hot water through the duration of the tenancy. They advised that at the termination of the tenancy there was an outstanding utility bill due to the gas supplier which related to the period after the expiry of the gas safety certificate and in respect of which the gas supplier had commenced recovery action.
14. Ms McIntosh submitted that at the last hearing the respondent had admitted that he had unpaid rent in the sum of £2387.80. As he had failed to attend the hearing or lodge any documents supporting his defence, the Landlord was entitled to an Order for Payment as sought.

Findings in fact

15. The applicant and the respondent entered into a short assured tenancy agreement in respect of the subjects at Flat 1, 8 Murrayshall Road, Perth.
16. The initial period of let was from 1st February 2017 to 2nd August 2017. Thereafter the tenancy continued on a month to month basis. The rent payable was £575 per month.

17. The respondent left the property on 2nd October 2018 and returned the keys by posting them through the letterbox at the applicant's representative's office.
18. The rent arrears as at the date the respondent removed from the property amounted to £2387.80.
19. A gas safety inspection was carried out on 31st January 2017.
20. The applicant's agents contact the respondent to request that he contact their gas safety engineer to arrange for an updated inspection to be carried out within 12 months of the previous inspection.
21. The respondent failed to make arrangements to allow the gas safety engineer access to the property.
22. The respondent reported no disrepair issues to the applicant's agent throughout the duration of the tenancy.
23. The respondent continued to have full use of the subjects including access to heating and hot water throughout the duration of the tenancy.

Reasons for the Decision

24. The Tribunal was satisfied that the outstanding rent was £2387.80.
25. The Tribunal took in to account the evidence of Mr Keddie and Ms McIntosh, the rent account which demonstrated the outstanding arrears and the respondent's representations at the CMD on 29th March 2019 when he agreed that the unpaid rent amounted to £2387.80.
26. The Tribunal noted that the gas safety certificate in respect of the property expired on 31st January 2018. The Tribunal accepted Mr Keddie and Ms McIntosh's evidence that they made efforts to contact the respondent to make arrangements to allow a gas safety engineer access to the property however the respondent had failed to cooperate to allow access.
27. The Tribunal accepted Mr Keddie and Ms McIntosh's evidence that the respondent had full use of the heating and hot water facilities within the tenancy throughout its duration.
28. The respondent failed to attend the hearing or lodge a written defence. The Tribunal was satisfied that on the basis of the evidence before them and the representations at the hearing there were no grounds for an abatement of rent.

29. The Tribunal found both Mr Keddie and Ms McIntosh to be credible and reliable and saw no reason to disbelieve their representations.

Decision

The Tribunal determined to grant an Order for Payment in the sum of TWO THOUSAND THREE HUNDRED AND EIGHTY-SEVEN POUNDS AND EIGHTY PENCE (£2387.80).

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.

Mary-Claire Kelly

Legal Member/Chair

29 April 2019

Date