



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/20/0339

Re: Property at 18 Vale of Bonnyview, Bonnybridge, FK4 1BP (“the Property”)

Parties:

Ms Jacqueline Stuart, 23 Orwell Place, Dunfermline, KY12 7XP (“the Applicant”)

Mr David Baird and Ms Rebecca Avezzano, whose current whereabouts are unknown (“the Respondents”)

Tribunal Members:

Shirley Evans (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) make an order for payment in the sum of ONE THOUSAND NINE HUNDRED AND TWENTY EIGHT POUNDS AND SEVENTY SEVEN PENCE (£1928.77) STERLING jointly and severally or severally by the Respondents to the Applicant. The order for payment will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondents.

Background

1. This is an application under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 for an order for payment of £4262.44. The Applicant claims rent, interest and loss of rent minus £260 deposit returned totalling £2152.07. She also claims other costs minus £500 deposit returned totalling £2110.37.
2. The application proceeded to a Case Management Discussion (“CMD”) on 4 December 2020 by way of teleconference call. The Applicant and both Respondents were in attendance and all represented themselves.

3. Whilst a number of matters were agreed by the Respondents during the course of the CMD, there were also matters which were disputed. Accordingly, at the end of the CMD the Tribunal decided it wanted to hear evidence to ascertain whether payment was due to the Applicant for the disputed items. Reference is made to the Note from the CMD.

Hearing

4. A hearing proceeded by way of teleconference call 2 February 2021. Ms Stuart represented herself. Ms Berrill, Messrs Hill & Robb, solicitor, represented the first Respondent David Baird, who was not in attendance. Ms Avezzano represented herself. Ms Berrill advised the position of Mr Baird reflected that of Ms Avezzano.
5. Before the hearing proceeded, parties confirmed who their witnesses were. Ms Berrill also advised the Respondents now accepted that they were due to pay the Applicant 2 days rent covering 1-2 December 2018 which had been disputed at the CMD. She also made another concession in relation to cupboard cleaning and confirmed that the concessions as set out in the CMD Note were accepted.
6. Before giving her evidence, Ms Stuart advised the Tribunal that she was no longer pursuing her claim for lost rental or her claim for travelling expenses to the Property at £18.90 per day for 10 days.
7. Ms Stuart referred the Tribunal to Clause 19.2 of the tenancy agreement and submitted she was seeking 8% interest. She was also seeking Sheriff Officers tracing fees under Clause 19.1 Both of these matters were disputed by Ms Berrill who submitted that as the Respondents had made various offers to pay rent by instalments which had not been accepted by the Applicant, no interest should be awarded. The Applicant explained she has taken advice from the Scottish Association of Landlords who had advised against taking payment at that time. Further Ms Berrill submitted that the Sheriff Officer's fees fell into the category of pre-litigation expense which would not normally be recoverable.
8. The Applicant gave evidence with regard to various losses relating to damage to doors, external areas, cleaning, replacement carpets and flooring, a replacement blind, rubbish removal, a wall unit and radiator cover and bleach staining to the master bedroom. She referred the Tribunal to various photographs lodged by her and by the Respondents and to various receipts to evidence her position. The Applicant confirmed she was also seeking labour costs of £1252.80 for her and her partner who had spent a lot of time and effort in clearing up the property and putting right the damage caused. The Tribunal pointed out however that it had no jurisdiction to make any award to her partner who was not party to the tenancy agreement. In the circumstances the

Applicant confirmed that she would accordingly seek half of that amount being her labour costs of £626.40.

9. The Applicant's evidence in chief finished just before lunch time. The Tribunal asked parties to consider whether it was necessary to lead all their witnesses and suggested that Ms Berrill may wish to take instructions as to whether, having heard the Applicant's evidence, other aspects of the Applicant's claim could be agreed without the necessity of hearing further evidence on any matters of subsequent agreement.

10. When the Tribunal convened after lunch, Ms Berrill advised she had a payment proposal to make to the Applicant on a broad brush basis. She set out the basis of her proposal which was met with a counter proposal from the Applicant with particular regard to the labour costs. The Tribunal afforded Ms Berrill an opportunity to take instructions in private. Ms Berrill advised the Tribunal that her client and indeed Ms Avezzano were prepared to agree rent and damages to the Applicant in the sum of £2688.77. The Applicant confirmed she was agreeable to settle for that amount. All parties also agreed that the deposit amount of £760 which had been repaid to the Applicant by a scheme administrator at the end of the tenancy, be deducted from the agreed figure of £2688.77 leaving the sum due to be paid by the Respondents of £1928.77. The Tribunal made an order for that amount with no interest.

11. The hearing drew to an end. The Tribunal thanked all parties for their courtesy in their conduct of the hearing and for their willingness to compromise in what was clearly a very stressful matter for them.

Reasons for Decision

12. Parties reached a settlement agreeable to them. The Tribunal felt in all the circumstances that interest should not be awarded and accordingly granted the Order in the agreed sum.

Decision

13. The Tribunal made an Order for Payment by the Respondents to the Applicant.

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.

Shirley Evans

4 February 2021

Legal Chair

Date