



**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/18/1974

Re: Property at 9 Merkland Place, Kirkoswald, KA19 8JF (“the Property”)

Parties:

Mr Robert Jackson, 4 Drumellan Street, Maybole, KA19 7BJ (“the Applicant”)

Mrs Felicia Steel, Craigenillan House, Ayr, KA6 7PZ (“the Respondent”)

Tribunal Members:

Morag Leck (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the Respondent to the Applicant in the sum of £4710.06

Background

1. By Application comprising documents received between 2nd and 30th August 2018 (“the Application”), the Applicant applied to the Tribunal for an order for payment in respect of alleged arrears of rent arising from the Respondent’s tenancy of the Property.

The application contained copies of the following documents:–

- i) Tenancy Agreement dated 16/11/15
- ii) AT5 dated 16/11/15
- iii) Section 33 Notice dated 18/4/18
- iv) Notice to Quit dated 18/6/18
- v) Applicant’s Bank Statements from 17/12/15 to 19/6/18
- vi) Receipt from the Applicant to the Respondent acknowledging Tenancy Deposit and first month’s rent to be kept by the Respondent for decorating purposes

- vii) Letter dated 8/7/17 from the Respondent confirming arrangement for payment of arrears of rent.
2. By Notice of Acceptance dated 13th September 2018 a Legal Member of the Tribunal with delegated powers accepted the Application which was referred to a Case Management Discussion (CMD) on 31st October 2018.
 3. At the CMD on 31st October 2018, the Applicant attended. The Respondent did not attend having received intimation of the date of the CMD by Sheriff Officers. The Tribunal advised the Applicant that it was necessary to provide a precise figure in terms of the sum sought and accordingly the application would be continued to a further CMD. The Applicant was advised by the Tribunal that in advance of the CMD he should provide the Tribunal with a statement showing the dates of the four weekly rental periods and the rent due for each period. That would provide the Tribunal with evidence of the total amount of rent that should have been paid between 17th December and 21 June 2015. The Applicant should also provide a total, taken from his Bank Statements of all amounts received from or on behalf of the Respondent, in order to calculate the shortfall and determine the precise amount that the Applicant was seeking by way of an Order from the Tribunal.
 4. The CMD was adjourned to 12th December 2018. Intimation was given to the Applicant by letter dated 19th November 2018 and to the Respondent by Sheriff Officers on the same date.

Case Management Discussion

5. The further CMD was held on 12th December 2018 at the Glasgow Tribunals Centre. It was intended that the CMD be conducted by teleconference. However the Applicant attended having been advised by the Tribunal Office the previous day erroneously that it was not a teleconference. He was accompanied by a Supporter, Ms Norma Mackay. The Respondent did not attend or join through the teleconference call although the teleconference link remained open throughout the hearing to allow for her participation.
6. The Tribunal noted that following the previous CMD, the Applicant had submitted a letter dated 12th November 2018 which set out the total rent due for the period as £19650, a list of all monies received during the rental period and a balance due of £5660.06. This amount did not take account of the £600 deposit which had been returned to the Applicant. He also stated in his letter that he wished to claim for the first month's rent as the Respondent had not decorated the Property and he also wished to claim for carpets which had been damaged and cost £500.
7. The Tribunal also noted that the Respondent had submitted written representations by email on 5th December 2018 along with a Schedule of photographs of the Property attached to her email... These representations had been intimated to the Applicant.

8. The Respondent in her representations disputed the allegation that she had not decorated the property and also disputed the alleged damage to carpets. She set out a number of issues regarding the state of the property during her tenancy and made reference to the photographs submitted in relation to these issues. She also stated in her representation that she had vacated the property on 1st June 2018
9. The Legal Member explained to the Applicant that she had calculated the amount of rent paid from the figures provided. She went through all of the figures detailed in the Applicant's letter of 12th November 2018 including payments received. The Legal Member confirmed that in terms of rent due the amount as stated by the Applicant was £19650. However she had calculated monies received as £14339.94 leaving a balance of £5310.06 which less the Tenancy Deposit of £600 amounted to £4710.06. This did not agree with the amount set out in the Applicant's letter.
10. The Applicant was further advised that if he now wished to amend his position to seek to include payment of the first month's rent, which had not previously been sought, and also claim for damage to carpets, then the application would require to be continued to a full hearing as these matters were disputed by the Respondent. The Legal Member also noted the Respondent's representations regarding the condition of the property. No representations had been made by the Respondent to suggest rent was being withheld due to issues with the Property. It was open to the Respondent to pursue a claim in respect of these matters but these issues did not form part of the current proceedings before the Tribunal. The Legal Member asked the Applicant if he would like a brief adjournment to consider the calculation of the amount of arrears sought and also his position on the first month's rent and his claim in respect of carpets and the Applicant stated he would wish to do so.
11. Upon the CMD resuming, the Applicant advised that he calculated the amount of arrears outstanding at the end of the tenancy to be £5310.06 which after deduction of the tenancy deposit of £600 was £4710.06. He confirmed that the amount sought in terms of the application was now accordingly £4710.06. He confirmed that he no longer wished to pursue the first month's rent and that he also no longer wished to pursue a claim for damage to the carpets .
12. The Tribunal then sought clarification regarding the end date of the Tenancy. The Applicant's position was that the Notice to Quit stated the end date of the Tenancy was 21st June 2018. He was aware of comings and goings from the Property by the Respondent before that date. The Respondent had been supposed to hand in the keys to a firm of solicitors in Ayr where his own solicitor had previously worked. He was advised by his solicitor that he had checked with that firm of solicitors and the keys had not been handed in. As a result he had required to change the locks at the property on 22nd June 2018. His position remained that the Tenancy ended on the date stated in the Notice to Quit.
13. He explained that he had made efforts to recover the arrears of rent as demonstrated by the letter from the Respondent in July 2017. He had also visited

the Council Offices in connection with the arrears of rent. The arrears had reduced over time but then built up again following a change in the calculation of the Respondent's Housing Benefit. He disputed all of the allegations made regarding the state of the property as submitted in the Respondent's representation.

Findings in Fact

14. The parties entered into a Short Assured Tenancy which started on 19th November 2015 and ended on 21st June 2018'.
15. The rent payable was £600 per four weekly period.
16. At the date of termination of the lease the Respondent had arrears of rent of £5310.06
17. The tenancy for the Property ended on 21st June 2018.
18. The Notice to Quit sought vacant possession as at 21st June 2018.
19. The Tenancy Deposit of £600 was returned to the Applicant after termination of the Tenancy. The applicant confirmed that the return of the deposit reduced the amount of arrears due to £4710.06.

Reasons for Decision

20. The Tribunal was satisfied that there was a valid certificate of Service by Sheriff Officers and that the Respondent was aware of the time and place of the CMD. She had not attended the CMD or participated in the teleconference link.
21. The Respondent had submitted written representations which related to the Applicant seeking the first month's rent and a claim for £500 in relation to damages for carpets both of which she disputed. The Applicant had withdrawn these claims and accordingly these were no longer live issues before the Tribunal.
22. The Tribunal noted the Respondent's position regarding the state of the Property during the Tenancy which in turn was disputed by the Applicant. The Tribunal further noted that the representations did not state that rent had been withheld on this basis. The Tribunal considered that it was open to the Respondent to pursue a separate claim in relation to these issues which did not form part of the consideration of the current application for arrears of rent which was before the Tribunal.
23. The Tribunal was also satisfied from the documents provided by the Applicant and the submissions made at the CMD that there had been a Short Assured

Tenancy which had ended on 21st June 2018 being the date set out in the Notice to Quit. The Tribunal was also satisfied that Respondent had accrued rent arrears of £5310.06 which had not been paid at the end of the Tenancy.

24. The Tenancy Deposit had been returned to the Applicant and this had reduced the amount of arrears due to £4710.06

25. The Tribunal, having been satisfied that the amount of £4710.06 was due by the Respondent to the Applicant, a payment order for that sum was made.

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.

Morag Leck

Legal Member/Chair

12/12/18

Date