

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision 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/19/2002

Re: Property at 11 Woodfoot Road, Hamilton, ML3 8LP (“the Property”)

Parties:

D&D Moncur, Jinglara Drum, Kinross-Shire, KY13 0UN (“the Applicant”)

Mr Donald Hanlon, Ms Margaret Charlene McEwan, 11 Woodfoot Road, Hamilton, ML3 8LP (“the Respondents”)

Tribunal Members:

Sarah O'Neill (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment by the respondents of the sum of £4668.84 should be granted in favour of the applicant.

Background

1. An application was received on 2 July 2019 from the applicant seeking a payment order brought in terms of rule 70 (Application for civil proceedings in relation to an assured tenancy under the Housing (Scotland) Act 1988) of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”).
2. The applicant was seeking payment of rent arrears of £3648.84 from the respondents in relation to the property, being the amount of arrears outstanding as at the date of the application.
3. The application included copies of the tenancy agreement between the parties, and a rent statement showing the rent due up to and including 13 July 2019 to be £3,648.84.

4. Notice of the case management discussion, together with the application papers and guidance notes, was served personally on both respondents by sheriff officer on behalf of the tribunal on 26 July 2019. The respondents were invited to make written representations by 16 August 2019. No written representations were received by that date.
5. On 30 July 2019, copies of two letters in identical terms sent by the applicant's representative, one addressed to each respondent, were received by the tribunal. These letters notified the respondents that the applicant was requesting to amend the application to increase the sum sought to £4668.84. The letters suggested that they obtain independent legal advice. The applicant's representative produced proof of delivery notifications at the case management discussion showing that these letters had been delivered and signed for on 31 July 2019.

The Case Management Discussion

6. A case management discussion (CMD) was held on 2 September 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The applicant was represented by Miss Kirsty Morrison, paralegal at TC Young Solicitors, who gave evidence on its behalf. Neither of the respondents was present nor represented at the CMD.
7. The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a CMD had been duly complied with. The tribunal delayed the start of the CMD by 10 minutes, in case the respondents had been detained. The tribunal therefore proceeded with the CMD in the absence of the respondents.

Evidence on behalf of the applicant

8. Miss Morrison asked the tribunal to grant an order in favour of the applicant against the respondents for payment of the sum of £4668.84. She referred on behalf of the applicant to the rent statement which was already before the tribunal, and to the letters sent to the respondents on 30 July, advising that the applicant wished to amend the application to increase the sum sought. She produced an updated rent statement, which showed the outstanding rent up to and including 13 September 2019 to be £4668.84.
9. The tribunal chairperson asked Miss Morrison to confirm whether a tenancy deposit had been paid to the applicant by the respondents. The tenancy agreement stated at clause 8: 'At the date of entry or before, a deposit of £.00 will be paid by the Tenant to the Landlord or his agents'. Miss Morrison telephoned the applicant's letting agent, who had taken over from the previous agent which had prepared the tenancy agreement, in order to clarify whether this was correct. They confirmed that they were not aware of any deposit having been paid by the respondents.

Findings in Fact

10. The tribunal made the following findings in fact:

- There was a valid short assured tenancy in place between the parties.
- As at the date of the CMD, the respondents owed the applicant the sum of £4668.84 in rental payments up to and including 13 September 2019.

Reasons for Decision

11. Having considered all of the evidence before it, and in the absence of any evidence from the respondents to the contrary, the tribunal was satisfied that an outstanding balance of rent arrears was due as at the date of the CMD in the sum of £4668.84. The tribunal consented to the applicant's request to amend the application to update the sum sought, which request had been properly made in terms of rule 14 A of the 2017 rules.
12. The tribunal noted that it appeared that the respondents had not paid a tenancy deposit to the applicant. There was accordingly no deposit sum to take into consideration in calculating the sum due.
13. The tribunal therefore decided to make an order for payment by the respondents to the applicant of the amended sum sought. As no time to pay application had been received from the respondents, this order was made for payment of the entire sum due.

Decision

The tribunal grants an order for payment by the respondents to the applicant for the sum of £4668.84.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

Sarah O'Neill

Legal Member/Chair

2/9/19.

Date