



**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/18/2054

Re: Property at 143 Strathaven Road, Stonehouse, ML9 3JN (“the Property”)

Parties:

Mr Alistair Ian Sutherland, 4 Stewart Street, Hamilton, ML3 0RJ (“the Applicant”)

Miss Sarah Jane Hunter, 143 Strathaven Road, Stonehouse, ML9 3JN (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. This is an application by the Applicant for civil proceedings in relation to an assured tenancy in terms of rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”), namely an order for payment of rent arrears. The tenancy in question was a Short Assured Tenancy of the Property by the Applicant to the Respondent dated 31 January 2014.
2. The application was dated 7 August 2018 and lodged with the Tribunal shortly thereafter. The application was accompanied with a rent statement showing purported arrears as at 26 June 2018 of £161.65, being a shortfall of rent over a long period of time. The monthly rent was £450 but a four-weekly rent payment cycle of £415.38 was on the statement, to coincide with Housing Benefit payments from South Lanarkshire Council. I was not able to follow the statement lodged, but the arrears of £161.65 appeared

to arise due to the Housing Benefit not covering the full rent and the Respondent failing to make up the balance over a long period of time. The full order sought in the application was for a “payment order for non payment of the outstanding rent due in the sum of £161.65 with interest and any expenses which may become due”.

The Hearing

1. On 21 November 2018, at a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting at the Glasgow Tribunals Centre, I was addressed by Ross Whiteford, of Scottish Property Centre in Hamilton, the letting agent for the Applicant.
2. There was no appearance by the Respondent. The Applicant’s agent confirmed that no contact had been received from the Respondent in regard to the notices or the application, though his office had received a request for a reference from another letting agent, suggesting to the Applicant’s agent that the Respondent had been seeking alternative accommodation. I was advised of no contact received from the Respondent by the Tribunal. I was satisfied in the circumstances to proceed in the absence of the Respondent.
3. The Applicant’s agent confirmed that the application for was still insisted upon and he sought an order in the amended amount of £2,223.76 which was the arrears of rent due to 13 November 2018. At the CMD he provided sight of a rent statement in much clearer terms (though this had not been lodged) which showed both the build up of arrears to the sum of £161.65 due on 26 June 2018 and the recent significant increase to £2,223.76 due to complete non-payment. He explained that South Lanarkshire Council had ceased to pay Housing Benefit, citing a “change in circumstances” of the Respondent. No payments of any sort had been received for some months from either the Council or the Respondent.
4. I sought submissions from the Applicant’s on the request in the application for an order on “interest” and “expenses”. He provided no submissions, explaining that the application had been drafted by the Applicant’s solicitor. On “interest”, I could not identify any provision in the lease that provided a contractual interest rate on arrears and the Applicant’s agent addressed me on none. On “expenses”, I could not identify any provision in the lease that allowed for contractual recovery of “expenses” and the Applicant’s agent addressed me on none.
5. In respect of the increase in arrears, given the very clear terms of the application which gave no suggestion that the sum sought for arrears in the order would exceed £161.65, and the non-appearance of the Respondent, I asked the Applicant’s agent whether he sought to amend the sum sought and have the application continued for intimation of that amendment on the Respondent. On consideration, he opted not to amend, instead reserving the Applicant’s position to raise a new application for the

arrears arising since 27 June 2018, along with any other sums due under the lease, at a later date.

Findings in Fact

6. On 31 January 2014, the Applicant let the Property to the Respondent by lease with a start date of 12 February 2014 and an end date of 12 August 2018, thereafter continuing on a month to month basis until terminated ("the Tenancy").
7. Under the Tenancy, the Respondent was to make payment of £450 per month in rent to the Applicant on the 12th of each month.
8. As of 6 June 2018, there was unpaid rent of £161.65 due by the Respondent to the Applicant in terms of the Tenancy in respect of a shortfall in the rent due, attributable to the immediately preceding month, though arising due to a long-standing deficit in the Housing Benefit received and rental payments made by the Respondent against rents due.
9. On 7 August 2018, the Applicants raised proceedings for an order for outstanding rent due in the sum of £161.65 with interest and any expenses which may become due.
10. The Respondent provided no evidence of payment of any part of the said unpaid rent due to 26 June 2018 of £161.65.
11. The lease provides no contractual rate for interest.
12. The lease provides no contractual provision for recovery by the Applicant of costs of debt recovery.

Reasons for Decision

13. The application was in terms of rule 70, being an order for civil proceedings in relation to assured tenancies. I was satisfied, on the basis of the application and supporting papers, and the submissions provided by the Applicant's agent at the CMD, that rent arrears of £161.65 were outstanding as at 26 June 2018.
14. The application having been raised for the £161.65 due to 26 June 2018, with no reference to seeking further rental arrears arising after that date, I was not minded to consider any order excess of that amount at this CMD. In coming to this decision, I particularly considered the apparent significant increase in arrears since 26 June 2018 and that this was related to Housing Benefit being withdrawn. As the Applicant's agent opted not to seek a formal amendment, I was satisfied that the necessary level of evidence for such civil proceedings on the sum of £161.65 had been provided.

15. In terms of the order sought for interest, I was satisfied to award interest at the rate of 8% per annum but from the date of intimation of the CMD on the Respondent only. I have briefly reviewed authorities on awards of interest by the Tribunal. I further have considered the guidance notes to Section 14 of the 2014 Act which provides the Tribunal with jurisdiction in such claims, ousting the jurisdiction of the Sheriff Court (and, specifically in a claim of this amount, the Simple Procedural Roll of the Sheriff Court). I am of the view that the Scottish Parliament's intention in transferring jurisdiction from the Sheriff Court to the Tribunal was to provide an alternative forum for such matters, and not to limit the rights of recovery enjoyed by litigants. To that end, the applicability of the relevant Act of Sederunt allowing judicial interest at 8% per annum to be awarded on Sheriff Court decrees should be deemed to apply to orders now issued under the Tribunal where the power to issue such orders transferred to the Tribunal under Section 14 of the 2014 Act. Should I be incorrect, I am minded that the law of restitution may further provide a right of recompense to an innocent creditor whose funds are unavailable to them due to unpaid debts. I regard 8% per annum from the date of intimation of the CMD as a reasonable recognition of both the loss of funds and the additional costs involved in having, and pursuing, an outstanding debt.
16. I was not satisfied to award any expenses. I could not see any grounds for them being contractually recoverable. As for recovery of same in terms of the Procedure Rules, the power to grant expenses by this Chamber is in terms of rule 40: "The First-tier Tribunal may award expenses as taxed by the Auditor of the Court of Session against a party but only where that party through unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense." I was not satisfied that this test was satisfied. Indeed, I was not addressed on the test at all, as the Applicant's agent candidly accepted that the reference to "expenses" was one made by the Applicant's solicitor and on which he had no views. In the circumstances, I refused the order for expenses sought in the application.
17. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal and I was satisfied to make a decision at the CMD to award the sum of £161.65 against the Respondent along with interest at the rate of 8% per annum from 31 October 2018 until payment.
18. I would note that my decision is in regard to contractual arrears of rent for the period concluding 26 June 2018 only. I note that the Applicant reserves his position on returning to the Tribunal for any further claims, whether they be contractual claims for payment or in damages, after he has assessed the position further. I make no comment on such potential further claims.

Decision

19. In all the circumstances, I was satisfied to make the decision to grant an order against the Respondent for payment of the sum of £161.65 to the Applicant along with interest at the rate of 8% per annum from 31 October 2018 until payment. I refuse the order for expenses sought.

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.

Joel Conn

Legal Member/Chair

21 November 2018

Date