



**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/18/2176

**Re: Property at 257 Pittencrieff Street, Dunfermline, Fife, KY12 8AW (“the
Property”)**

Parties:

**Kingdom Initiative Limited, Saltire Centre, Pentland Court, Glenrothes, KY6
2DA (“the Applicant”)**

**Ms Hope Clark, 257 Pittencrieff Street, Dunfermline, Fife, KY12 8AW (“the
Respondent”)**

Tribunal Members:

Lesley Johnston (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) granted an Order for Payment in the sum of £4,880.08.**

Background

By application dated 16 August 2018 Kingdom Initiative Limited (‘the Applicant’) applied to the Tribunal for an Order for Payment against Hope Clark (‘the Respondent’) in respect of the property at 257 Pittencrieff Street, Dunfermline, Fife, KY12 8AW (‘the property’). The application is made in terms of Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017 (‘the Rules’).

The application is made in respect of the short assured tenancy between the parties dated 1 July 2015 (‘the lease’).

A Case Management Discussion was held on 5 December 2018 at the Lomond Centre, Glenrothes. The Case Management Discussion was continued from 25

October 2018 following directions from the Tribunal for further information in respect of the circumstances of the other tenant named on the lease dated 1 July 2015.

The Applicant was represented at the hearing by Ms Gibson of Innes Johnston as local agent for Shepherd & Wedderburn.

The Respondent was neither present nor represented.

Notice of the hearing was served on the Respondent by Sheriff Officers depositing the Notice of the hearing through the Respondent's letterbox on 13 November 2018 at the property.

The Tribunal was aware that an order for eviction to remove the Respondent from the property was granted on 25 October 2018 not to be executed prior to 12 noon on 26 November.

The Tribunal adjourned to allow Ms. Gibson to take instructions as to whether or not the Respondent was still residing within the property or whether she had voluntarily removed. The principal agents, following contact with the Landlord direct during the hearing, confirmed that the Respondent was still residing within the property as at the date of the hearing.

I was therefore satisfied that notice of the hearing had been given to the Respondent in terms of Rule 24 and was content to proceed with the hearing in the absence of the Respondent in terms of Rule 29.

Ms. Gibson moved for the application to be granted. She submitted that as at 24 October 2015 the rent arrears were in the sum of £4,880.08. She referred to a rent statement to 24 October 2015 in that regard.

It was unclear whether the Tribunal had allowed an amendment to that sum at the hearing on 25 October 2018. Ms Gibson therefore moved to amend the sum sought in the application from £4,337.17 to £4,880.08.

Ms Gibson addressed the direction made by the Tribunal at the last hearing in which the following information had been requested:

- “1. Whether the tenancy as regards Mr Russell continues to today's date*
- 2. If he has left the property prior to today's date, when that occurred*
- 3. If he has left the property, whether the Applicant was notified of this and if so, details of this notification*
- 4. If he has left the property, whether the Respondent accepted sole responsibility for the rent and if so details of this acceptance*
- 5. Whether the Applicant has contact details for Mr Russell*
- 6. With regard to the weekly payment of £40, how this came about and detail as to the agreement as between the Applicant and the Respondent in this regard.”*

Ms Gibson referred to the written representation from Shepherd & Wedderburn dated 21 November 2018 and the Applicant's Diary Notes detailing all interactions by the Applicant in respect of the tenancy from 1 July 2015 to 8 November 2018.

The written representation confirmed that:

1. Mr Russell left the property on 14 August 2017 and was no longer a tenant of the property;
2. The Applicant was notified by the Respondent that Mr Russell had left the tenancy on 14 August 2017. On that date the Respondent requested that she wished to have Mr Russell removed from the tenancy as he had vacated the property.
3. On 29 August 2017 Mr Russell cancelled the direct debit payments in respect of the rent
4. The Respondent contacted the Applicant again on 13 October 2017 to confirm that Mr Russell no longer resided at the property and that she would contact the Applicant to make arrangements for payment of the outstanding rent;
5. The Applicant attempted to contact the Respondent regarding the arrears of rent on 19 October, 26 October, 8 November, 14 November, 22 November and 30 November 2017 but was not successful
6. On 6 December the Applicant contacted the Respondent and advised of the difficulties faced by the Respondent, who accepted that she had buried her head in the sand;
7. On 12 December the Applicant carried out a home visit with the Respondent who advised that she had started work and wanted to set up a direct debit for £40 per week towards the arrears as from 19 December 2017 and would set up a further direct debit for full rent from 15 January 2018.
8. The Applicant does not have any forwarding address for Mr Russell.
9. The Applicant has been in receipt of £40 per week, but has not received any payments towards the rent charge.
10. That the Respondent was jointly and severally liable for the rent due on the property when Mr Russell was a tenant, and she continued to be liable as sole tenant. The Applicant is therefore liable to seek recovery of the arrears from the Respondent.

Ms Gibson confirmed that no new lease had been signed by the parties following Mr Russell's departure from the property.

Findings in fact

1. On 1 July 2015 the parties entered into a short assured tenancy in respect of the property;
2. The Respondent and Robert Russell were joint tenants of the property;
3. The rent due to be paid in respect of the property from 1 July 2015 was £437.80 payable monthly in advance;
4. The rent due to be paid in respect of the property from 1 April 2016 was £448.75 payable monthly in advance

5. The rent due to be paid in respect of the property from 1 April 2017 was £459.97 payable monthly in advance;
6. The rent due to be paid in respect of the property from 1 April 2018 was £471.47 payable monthly in advance;
7. Robert Russell moved out of the property on or around 14 August 2017;
8. Robert Russell cancelled his direct debit in respect of the property on 29 August 2017;
9. The Respondent remained a tenant at the property following Mr Russell's departure;
10. The Respondent fell into rent arrears from 1 September 2017;
11. The parties agreed on 12 December 2017 that the Respondent would pay £40 per week towards the rent arrears and would pay the rent going forward in full from 15 January 2018;
12. No rental payments were received from 15 January 2018;
13. The Respondent paid £40 per week to the Respondent from 20 December 2017 to 23 October 2018;
14. As at 24 October 2018 the total rent arrears outstanding for payment by the Respondent are £4,880.08.
15. An order for the Respondent's eviction from the property was granted by the Tribunal on 25 October 2018.
16. The Respondent has not yet removed from the property.

Reasons for decision

The Tribunal was satisfied that the application complied with the formal requirements of Rule 70.

The Tribunal exercised its discretion and allowed the Applicant's application for amendment in terms of rule 13 to increase the sum sought under the application to £4,880.08. In exercising its discretion, the Tribunal took into account that the reference to the increased outstanding rent had been made at the last Case Management Discussion on 25 October 2018 and was set out in the Notes on the Case Management Discussion which had been served on the Respondent on 13 November 2018. The Tribunal was satisfied that the amendment raised no new issue.

The Tribunal was satisfied on the basis of the Rent Statement dated to 7 August 2018 and the updated Rent Statement to 24 October 2018 that the level of rent arrears to be paid by the Respondent to the Applicant was in the sum of £4,880.08. The Applicant had made attempts to settle the rent arrears accrued from 1 September to 12 December 2017 by the Respondent agreeing to pay £40 per week from 20 December 2017 towards the arrears as well as paying the full rent due going forward, from 15 January 2018.

The Respondent had not adhered to paying the full rent from 15 January 2018, however, she had continued to make payment of £40 per week to the Applicant. Despite the Respondent's attempts to clear the arrears, they continued to accrue on the basis that no full month's rent had been paid since 1 September 2017.

The Tribunal was satisfied, based on the documents before it, that the Applicant had attempted to engage with the Respondent in relation to payment of the rent arrears. Despite those efforts, the level of arrears have continued to accrue.

Based on the information before the Tribunal, the Tribunal was satisfied that the Respondent was liable to make payment for the rent in respect of the property and that rent arrears had accrued from 1 September 2017 to 24 October in the sum of £4,880.08.

Decision

The Tribunal accordingly grants an Order for Payment in the sum of £4,880.08.

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.

Lesley Johnston

Legal Member/Chair

5 / 12 / 18

Date