

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 70 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

Chamber Ref: FTS/HPC/CV/18/2609

Re: Property at 46 Main Street, Kirkoswald, Maybole, KA19 8HY (“the Property”)

Parties:

The most Honourable Lord David Thomas Kennedy, Ninth Marquis of Ailsa, Lady Elizabeth Drummond and Reverend Norman Drummond, Trustees of the Ailsa 1983 Trust, Estate Office, Jamestown, Maidens, Girvan, KA26 9NF (“the Applicant”)

Mr Martin Still, 46 Main Street, Kirkoswald, Maybole, KA19 8HY (“the Respondent”)

Tribunal Member:

Martin McAllister (Legal Member)

Decision (in absence of the Respondent)

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

The Respondent is in arrears of rent in respect of his tenancy of the Property and that Decree in favour of the Applicant be granted in respect of a payment by the Respondent of the sum of £5,392.10

Background

This is an application in respect of rent arrears concerning the Property and a lease dated 5th June 1987. The application is dated 2nd October 2018. A case management discussion was fixed for 19th December 2018.

The date was intimated to the Respondent by Sheriff Officers and he was invited to make representations. No representations were made.

Case Management Discussion

The applicant was represented by Mr Stephen Moffat, solicitor. The Respondent was not present.

Preliminary Matters

Mr Moffat said that, since the application had been lodged, no rent had been paid but that his clients were not seeking to amend the sum being sought. He said that, at the time the application was made, the level of rental arrears was £7,555.81 but that his clients were restricting the sum sought to a figure of £5,392.10.

Mr Moffat drew my attention to the letter his firm had sent to the Respondent dated 27th July 2018 and which had been served on him by Sheriff Officer on 30th July 2018. In that letter the Respondent had been made aware of the level of arrears and that action would be taken to recover the sum due. He said that there had been no response from the Respondent.

Mr Moffat indicated that he did not think that a Hearing on the application was necessary on the basis that the Respondent was well aware of what is being claimed and had never challenged the level of arrears with his clients, his firm or the Tribunal.

The following papers were before me:

- Application dated 2nd October 2010.
- Rent statement.
- Correspondence between the Applicant and Respondent.
- Minute of Lease dated 5th June 1987.
- Letter from Anderson Strathearn to the Respondent dated 27TH July 2018.

Findings in Fact

1. The Respondent is a tenant of the Applicant in respect of the property and subject to the terms of a Minute of Lease dated 5th June 1987.
2. The current rental payable in respect of the Property is £150 per month.
3. The tenant last made a payment of rent on 3rd June 2015.
4. The level of rental arrears is £7,551.81.

Reasons for Decision

I had no reason to doubt what Mr Moffat stated with regard to the level of rent arrears and this was vouched by the rental statement.

The Minute of Lease discloses that the rent then was £1,000 per annum and Mr Moffat advised that it had been increased since then.

Mr Moffat said that his clients were content to restrict their claim to £5, 392.10 which he said represented five years' rent arrears as at the date of the application.

The terms of Anderson Strathearn's letter to the Respondent dated 27th July 2018 stated *inter alia* "...we write to advise that unless the arrears of £7,255.81 are cleared within 7 days of today's date our clients will have no option to raise an action for recovery of these arrears."

The letter sent to the Respondent by the Tribunal and served by Sheriff Officers on 27th November 2018 stated that he could make representations and invited him to attend the case management discussion. It also stated that the Tribunal could make any order at a case management discussion which it could do at a Hearing.

Notwithstanding the fact that the Respondent was not present, I consider it reasonable to make the order sought by the Applicant who I find was aware of the application and could have made representations or attended.

Decision

The Respondent is in arrears of rent in respect of his tenancy of the Property and Decree in favour of the Applicant is granted in respect of a payment by the Respondent of the sum of £5,392.10

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.

Martin J McAllister

Martin J. McAllister
Legal Member/Chair

19th December 2018