

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 Section 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/CV/18/2955

Re: Property at 9 Yewlands Gardens, Edinburgh, EH16 6TA (“the Property”)

Parties:

Mr Ian McDonald, 77 Clermiston Road, Edinburgh, EH12 6UU (“the Applicant”)

Mr Derek Mills, 11 Wardieburn Road, Edinburgh, EH5 1LZ and Mrs Deborah Mills, 2 Flat 1, 53 George IV Bridge, Edinburgh, EH1 1EJ (“the Respondent”)

Tribunal Members:

George Clark (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be granted without a hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £13,047.84.

Background

By application, received by the Tribunal on 1 November 2018, the Applicant sought an Order for Payment in respect of unpaid rent that had become lawfully due by the Respondent in respect of the Property. The amount sought was £9,900.

The application was accompanied by a copy of a Short Assured Tenancy Agreement between the Parties, commencing on 18 May 2015 at a rent of £1,100 per month, with a deposit of £1,500 and a rent statement showing arrears as at 1 November 2018 of £9,900.

A Case Management Discussion was held on 13 March 2019, at which the Respondent confirmed that an updated rent statement showing arrears of £13,491.96 was factually correct and accepted that the last rent payment made by the Respondent had been on 2 July 2018. Since then, the Respondent had withheld the rent due to an alleged failure by the Applicant to carry out repairs at the Property. The Tribunal Chair adjourned the Case Management Discussion to give the Respondent the opportunity to obtain housing or legal advice about whether the

Respondent had any stateable defence to the civil action for rent arrears, given that the Respondent accepted that the figures on the rent statement were correct.

A further Case Management Discussion was held on 10 May 2019 and the Tribunal Chair granted a request for a further adjournment to enable the Respondent's legal representative to attend. As, however, the Respondent was now disputing the rent statement as it did not take into an account the sum of £8,800 which the Respondent said was paid in advance, the Tribunal also issued a Direction on 10 May 2019, requiring the Applicant to provide documentary evidence of all payments received by the letting agents from the Respondent in connection with the lease of the Property and requiring the Respondent to provide receipts, bank records or other documentary evidence showing all payments of rent made to the Applicant or the letting agents from the start of the tenancy until the Respondent vacated the Property on 8 May 2019, together with full details of all of the repairs issues which the Respondent considered justified an abatement of rent and evidence of notification of these issues to the Applicant or the letting agents. All documentation was to be lodged with the Tribunal no later than 31 May 2019.

On 30 May 2019, the Applicant provided the Tribunal with Rent Statements issued by his letting agents for the period of the lease from 18 May 2015 to 8 May 2019 inclusive. These showed arrears currently standing at £13,047.84. The Applicant also provided a copy of an e-mail from his letting agents dated 15 May 2019, in which the agents confirmed that no payment of £8,800 had been received. The Respondent had paid £7,800 on 26 May 2015, being the balance of deposit of £1,200 (£300 having been paid as a holding deposit on 9 April 2015) and advance payment of six months' rent.

The Respondent did not provide the Tribunal with any of the documentation or information required by the Direction of 10 May 2019.

Case Management Discussion

A further Case Management Discussion was held at George House, 126 George Street, Edinburgh on the morning of 26 June 2019. The Applicant was present and was represented by Mr Iain Leslie of Leslie & Co, solicitors. The Respondent was not present or represented, having advised the Tribunal by telephone on the morning of the Case Management Discussion that the Respondent, Mr Mills was unwell and that Mrs Mills would not be attending.

The Applicant advised the Tribunal to grant an Order for Payment of the outstanding sum of £13,047.84 without a hearing. The Applicant also asked the Tribunal for an Order for Payment in respect of legal expenses and other outlays.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision. The Tribunal was satisfied that it had before it all the information and documentation it required and that it would determine the application without a hearing.

The Tribunal was satisfied that the amount sought was lawfully due by the Respondent to the Applicant. The Applicant had accepted at the Case Management Discussion on 10 May 2019 that this was the case. The Respondent had raised an issue regarding the initial payment made to the letting agents, but had failed to provide any evidence of a payment of £8,800, whereas the Applicant had provided

documentary evidence from the letting agents of a payment of £7,800 at the outset of the tenancy. The Tribunal accepted that evidence.

The Tribunal noted that at the previous Case Management Discussion, the Respondent had contended that an abatement of rent and the withholding of rent were justifiable due to repairs issues with the Property. The Tribunal did not accept this argument. The Respondent could have applied to the Tribunal at any time during the tenancy for a Repairing Standard Enforcement Order if the Property did not meet the repairing standard and, in any event, despite having been directed to do so following the Case Management Discussion on 10 May 2019, the Respondent had not produced any details of the repairs issues, or evidence of their notification to the Applicant or the letting agents. The Tribunal determined that these matters had no relevance to the question before it, namely the failure to pay rent that had become lawfully due.

The Tribunal was satisfied that the amount sought by the Applicant had become lawfully due by the Respondent and determined that the application should be granted and an Order for Payment issued.

The Tribunal was not prepared to make a further Order for Payment in respect of legal fees and other outlays incurred by the Applicant. These could, should the Applicant wish, be the subject of a separate application to the Tribunal.

Decision

The Tribunal determined that the application should be granted without a hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £13,047.84.

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.


Legal Member/Chair

26 June 2019
Date