

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/19/3710

Re: Property at 1 Maybank Lane, Glasgow, G42 8RF (“the Property”)

Parties:

Mrs Eileen Shepherd, C/O Indigo Square Property LTD, 42 Holmlea Road, Glasgow, G44 4AL (“the Applicant”)

Mr Ian Scott, 1 Maybank Lane, Glasgow, G42 8RF (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member) and James Battye (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the respondent shall make payment to the applicant of the sum of seven thousand six hundred and eighty pounds (£7680).

Background

1. This was an adjourned hearing in connection with an application in terms of rule 70 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, ‘the rules’ and s16 of the Housing (Scotland) Act 2014, ‘the Act’, to recover rent arrears. The applicant was represented by Ms Val West of Indigo Square Property Ltd and the applicant’s son, Mr Mark Shepherd, also attended. The respondent attended. The hearing proceeded by conference call due to the Covid-19 pandemic.
2. Due to an administrative error, the tribunal CMD note and directions from 13 March 2020 were not issued to the parties in advance of the first hearing on 20 August 2020. This was adjourned at the respondent’s request and the tribunal made the following directions:

The Respondent is required to provide:

- (1) A copy of the most recent lease between the parties.**
- (2) Copies of correspondence between the parties or their agents regarding the respondent withholding rent for the property.**
- (3) Copies of correspondence between the parties or their agents regarding any alleged defects to the property.**

The said documentation should be lodged with the Chamber no later than close of business on 3 September 2020.

Preliminary matters

3. The tribunal noted that since the last hearing the applicant has sent the following to the tribunal:
 - (i) Email of 2 September 2020 with photographs of the property.
 - (ii) Email of 3 September 2020 with photographs of the property.
 - (iii) Email of 7 September 2020 with updated rent schedule with rent arrears as at 5 September 2020.
 - (iv) Email of 7 September 2020.The respondent had sent the following to the tribunal since the last hearing:
 - (i) Email of 20 August 2020.
 - (ii) Email of 27 August 2020.
4. The respondent had also sent a further email to the tribunal of 1 and 3 September 2020. Attached to the emails of 3 September 2020 there were the following:
 - (i) Email from Indigo Square dated 30 November 2018.
 - (ii) Letter from Mrs Shepherd dated 29 November 2018.
 - (iii) Email from Indigo Square dated 16 February 2018.
 - (iv) Email from Indigo Square dated 30 November 2018.
 - (v) Email from Indigo Square dated 4 October 2018.
 - (vi) Email from Indigo Square dated 1 May 2019.
 - (vii) Email from Mr Scott to Indigo Square dated 30 April 2019.
 - (viii) Email from Mr Scott to Indigo Square dated 29 June 2019.
 - (ix) Email from Mr Scott to Indigo Square dated 9 August 2019.
 - (x) Email from Mr Scott to Indigo Square dated 16 January 2020.
 - (xi) Email from Mr Scott to Indigo Square dated 21 November 2019.
 - (xii) Email from Mr Scott to Indigo Square dated 3 March 2020.
 - (xiii) Email from Mr Scott to Indigo Square dated 18 August 2019.
 - (xiv) Email from Mr Scott to Indigo Square dated 21 November 2019.
 - (xv) Statement of account of storage charges for I Maybank Lane.

5. In addition to the foregoing documents the tribunal had before it the following copy documents:
- (i) Application dated 18 November 2019.
 - (ii) Rent statement dated 1 November 2019.
 - (iii) Lease dated 13 April 2016.
 - (iv) Land certificate.
 - (v) Disposition by applicant transferring title to Mr Ian Shepherd dated 25 May 2017.
 - (vi) Email from applicant's agent to the tribunal dated 22 January 2020 detailing works carried out to the property.
6. The applicant's representative stated that they were seeking an order for payment in respect of the rent arrears. Rent arrears continue to accrue and no rent had been paid since November 2018. The rent arrears stand at £7680 and a further payment is due on 3 October 2020. She also pointed out that the respondent had failed to lodge any documents in relation to a door that he said at the last hearing he replaced at his own expense in 2008.
7. The tribunal noted that the respondent made reference in his most recent correspondence to the tribunal to various matters that he wished the tribunal to take in to consider, namely:
- the door he replaced at a cost of £800;
 - a payment of 6 months rent for eviction proceedings initiated on false pretences;
 - an abatement of rent due to works not being completed to the property;
 - an abatement of rent to off set the storage costs he incurred between July 2017 and January 2020 having anticipated he was due to lose the tenancy.
8. During the hearing Mr Scott clarified that he was only asking the tribunal to take in to account the storage costs he incurred. He was no longer insisting on the other matters. It was his position that the storage costs he incurred outweighed the arrears of rent.

Agreed matters

9. Mr Scott agreed that the rent arrears for the property currently stand at £7680. Mrs West agreed on her client's behalf that that Mr Scott had made arrangements to store some furniture with Safestore of 88 Lawmoor Street Dixon Blazys Glasgow G5 0TY. She agreed that although the statement of account lodged by Mr Scott did not have the company's name on it, she had

previously seen an invoice addressed to Mr Scott by Safestore and it was not disputed that Mr Scott had stored belongings with Safestore at the costs he had indicated. Mr Scott's position was that between July 2017 and January 2020 he paid around £8000 to Safestore for the storage of 3 van loads of belongings. This was not disputed by Mrs West.

Disputed matter

10. It was Mr Scott's position that the storage costs effectively cancelled out the arrears of rent. He gave evidence that in July 2017 he was told by the applicant that she had sold the property and he would require to move out. It was agreed that the applicant would help him move some of his belongings into storage. The applicant paid the first month's storage payment. It was Mr Scott's evidence that he subsequently discovered that the property had not been sold by the applicant as he was previously advised. He then refused to move out and he continued to reside in the property. He decided to leave his belongings in storage as he expected that eviction proceedings would be forthcoming, and he was content that they were safe. It was his evidence that he was told by the applicant that he could not bring the stored items back to the property. It was his evidence that he emptied the locker on 23 January 2020 and brought the contents to the property. He was no longer able to afford the storage costs. It was the respondent's position that he incurred the storage costs due to the applicant's actions and the rent arrears should be reduced to take into account the storage costs.

11. It was the applicant's position that Mr Scott made the decision to incur the storage costs and they are not related to the rent arrears application. The tribunal heard evidence from Mr Shepherd that the family had contracted to sell the property occupied by Mr Scott and the adjoining property in part payment of the cost of acquiring a business. The deal had fallen through because Mr Scott refused to leave after he was served with a notice to quit. Mr Shepherd gave evidence that his parents had offered to pay the first month's storage costs to help Mr Scott and with a view to him moving out of the property. It was his evidence that the further costs were a matter for Mr Scott. There was nothing to prevent him moving his belongings back to the property and indeed they thought he had done so. Mr Shepherd made reference to the photographs lodged on 3 September 2020 which showed that the property was very cluttered with boxes. It was Mr Shepherd's evidence that when it was clear that Mr Scott was not willing to leave the property, essential works had to be carried out. It was Mrs West's submission that Mr Scott caused a delay in the work being completed. Mr Scott told her that he was advised by his solicitor to withhold rent until the work completed. It was her submission that the reason Mr Scott stopped paying rent in November 2018 was due to the works to the flat and nothing whatsoever to do with the

storage charges. It was the applicant's position that Mr Scott was not entitled to withhold rent for any reason and the storage charges were his concern and not relevant to this application.

12. Findings in fact

- (1) The tribunal is satisfied that Mr Ian Shepherd is the owner of the property, title having been transferred from the applicant in 2017.
- (2) The tribunal is satisfied that applicant was the owner of the property in 2016 when the property was let to the respondent.
- (3) The parties entered into a lease on 13 April 2016 for let of the property for an initial period of one year from 13 April 2016 until 12 April 2017.
- (4) The agreed rent was £80 per week.
- (5) Rent arrears began to accrue in November 2018.
- (6) The rent arrears as at 5 September 2020 are £7680.
- (7) The respondent refuses or delays to make payment.

Reasons

13. The level of arrears were not in dispute. Mr Scott agreed that he had not paid any rent since November 2018 and arrears of £7860 had accrued. It was his position that he should not be found liable to pay any rent because he was paying storage costs from July 2017 until January 2020 which exceeded the rent due.
14. The tribunal was satisfied that the rent was due. The tribunal was not satisfied that it is reasonable to make any deductions from the rent arrears in the respondent's favour due to the storage costs he incurred. According to the respondent's evidence, he had made arrangements with the storage company to store some belongings. It was the tribunal's view that it was open to the respondent to cancel that arrangement when his plan to move out of the property changed. The respondent gave evidence that he was not permitted by the applicant to move his property back. The tribunal preferred the evidence of Mr Shepherd who stated that there was nothing to prevent Mr Scott from doing so. It was his evidence that the family thought he had returned his belongings as the property was so full of belongings. Mr Scott stated that he had made it clear to the applicant that he was withholding rent due to the storage charges, but this was not borne out by the written evidence lodged. Mr Scott in his email of 30 April 2019 to the applicant's representative stated that he was withholding rent due to outstanding repairs. Further, Mr Scott gave evidence that he paid rent until November 2018, some 16 months after the storage charges commenced. He also gave evidence that he moved his belongings in January 2020 despite his evidence that he was prevented from removing them due to the applicant telling him that he may not do so.

15. The tribunal had regard to Stalker on Evictions at page 126. The tribunal was mindful that to grant an order for rent arrears the rent must be lawfully due. The respondent did not make out a case for abatement on the basis of any contractual breach by the applicant. The lease lodged is only one page long and it notes that the landlord is responsible for decoration and structural maintenance. Although the respondent was no longer proceeding on the basis of an abatement due to repairs to the property, from the tribunal's perusal of the list lodged the repairs related to upgrading and maintenance and there was no suggestion that the property did not meet the repairing or tolerable standard.

16. The decision of the tribunal is unanimous.

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 Ward

2 October 2020

Lesley A Ward Legal Member

Date