



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/19/4079

Re: Property at Finella Cottage, 123 Market Street, Brechin, Angus, DD9 6BD (“the Property”)

Parties:

Mr Nigel Strain, Bryniau, Cochion, Nebo, Caenarfon, LL54 6EH (“the Applicant”)

Miss Laura-Louise Urquhart, 38 High Street, Brechin, Angus, DD9 6EY (“the Respondent”)

Tribunal Members:

Shirley Evans (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 breach of the tenancy agreement with the Applicant and has failed to pay rent. The Tribunal accordingly has decided to make an order for payment in the sum of FIVE THOUSAND TWO HUNDRED AND EIGHTY THREE POUNDS AND FIFTEEN PENCE (£5283.15) STERLING. The order for payment will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.

Background

1. By application dated 16 December 2019 the Applicant’s agent applied to the First- tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for payment of rent arrears against the Respondent relating to a tenancy at the Property.

2. On 7 January 2020, the Tribunal accepted the application under Rule 9 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
3. A Case Management Discussion (“CMD”) had originally been assigned to proceed on 28 February 2020. Neither party appeared or was represented at the Case Management Discussion on 28 February 2020. The Tribunal issued a written decision to reject the application on 28 February 2020. A copy of the decision was intimated to parties on 3 March 2020.
4. On 13 March 2020, the Applicant’s agent sent an email to the Tribunal and requested an “appeal” of the decision. From the content of the email from the Applicant’s agent it appeared to the Tribunal that the Applicant’s agent was seeking a recall of the decision of 28 February 2020 under Rule 30 of the Regulations with her request for a rescheduling of the Case Management Discussion and her explanation for her non-attendance. A copy of the Applicant’s agent’s email of 13 March 2020 was sent to the Respondent on 17 March 2020. The Respondent made no representations in response.
5. In treating the Applicant’s agent’s email of 13 March 2020 as an application for a recall, the Tribunal was mindful of the overriding objective in terms of Rule 2 of the Regulations. The Tribunal considered the circumstances and recalled the decision made on 28 February 2020 and assigned a new CMD.
6. On 7 August 2020, the Tribunal advised parties that a CMD under Rule 17 of the Regulations would proceed on 31 August 2020. This paperwork was sent to the Respondent by Recorded Delivery post and signed for at her address on 8 August 2020. A copy of the Royal Mail track and trace receipt was received by the Tribunal administration.

Case Management Discussion

7. The CMD proceeded by way of teleconference call on 31 August 2020. Mrs Roberts from Wardhaugh Property appeared on behalf of the Applicant. There was no appearance by or on behalf of the Respondent despite the teleconference starting 10 minutes late to allow the Respondent plenty of time to join. The Tribunal was satisfied the Respondent had received intimation that the CMD would proceed on 31 August 2020 notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in her absence.

8. The Tribunal had before it a Short Assured Tenancy Agreement between the Applicant and the Respondent signed and dated 26 July 2016 and a rent statement.
9. Mrs Roberts requested that the Tribunal grant an order for payment to reflect the rent arrears that had accrued. She explained the arrears were £5283.15 up to the 28 September 2019, but the tenancy had not actually terminated until 1 November 2019. She explained the monthly rent of £735 for October 2019 was not shown on the rent statement. The Tribunal noted that in terms of Clause 6 of the tenancy agreement the Respondent had agreed to pay £735 per month rent. Mrs Roberts went onto explain that there had been a shortfall of rent throughout the tenancy due to the Respondent's benefit situation. The last payment was for £328.76 on 27 September 2019. The deposit had been returned to the Applicant in full, but that covered the damage to the property. The Respondent had made promises to enter into a payment plan to clear the arrears, but nothing had been paid. She had last had contact with the Respondent on 1 November 2019 when the Respondent took away the last of her possessions from the Property. She saw the Respondent most days in the street, but the Respondent ignored her.

Findings in Fact

10. The Applicant and the Respondent agreed by way of a Short Assured Tenancy Agreement dated 26 July 2016 in relation to the Property that the Respondent would pay the Applicant a calendar monthly rent of £735.
11. The Respondent had fallen into arrears of rent. The last payment to account was of £328.76 on 27 September 2019. The Respondent has made no payments of rent since and had not entered into any payment plan to pay the arrears.
12. The arrears as at 28 September 2019 were £5283.15. There had been a shortfall in the amount paid in rent throughout the tenancy compared to the monthly rent due. The tenancy terminated on 1 November 2019.

Reasons for Decision

13. The Respondent had accrued arrears of £5283.15 due to a shortfall between the monthly rent of £725 and payments made. The Applicant had produced evidence of persistent non- payment of rent over a substantial period of time with reference to the tenancy agreement and the rent statement lodged. The Tribunal was satisfied on the basis of these documents, together with Mrs

Robert's submissions that the Applicant was entitled to the payment order sought.

Decision

14. The Tribunal granted an order for payment of £5283.15.

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.

S Evans

1 September 2020

Legal Member

Date