



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/20/0240

Re: Property at Flat 0/3, 209 Kirkton Avenue, Glasgow, G13 3AF (“the Property”)

Parties:

Mrs Isabel Landells, 16 Monkton Road, Prestwick, KA9 1AR (“the Applicant”)

Elizabeth Akinmuda, Flat 0/3, 209 Kirkton Avenue, Glasgow, G13 3AF (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it would grant an order for payment of FIVE THOUSAND EIGHT HUNDRED POUNDS (£5,800.00) STERLING

Background

1. An application was made to 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 (“the 2017 Rules”) seeking an order for payment of the sum of £6,200 to the applicant in relation to rent arrears due by the respondent.
2. There had been sundry procedure in this case with two case management discussions taking place, reference is made to those case management discussion

notes. A hearing was fixed to take place on 3 February 2021 which was adjourned on the motion of both parties; the hearing proceeded to take place on 1 April 201 but was adjourned on the motion of the respondent's solicitor as the respondent was attending a medical appointment that day and two witnesses were not available. Reference is made to that hearing note.

3. At today's hearing both parties appeared with their agents. Mr Gilius from Messrs James B Black Hay and Co for the applicants; and Ms Kassia Prochalska from Legal Services Agency for the respondent.
4. The respondent had submitted a list of witnesses prior to today's hearing and a witness statement from Mr Adetokunbo Babatunde. The witness statement was unsigned and had been taken by a solicitor on 26 April 2021. The witness was not in attendance at today's hearing due to ill-health.
5. The tribunal had before it the following documents from the applicant
 - a. Tenancy agreement
 - b. Rent statement
 - c. Bank statement

From the respondent

- a. Written defence
- b. 4 Emails from the landlord to the respondent
- c. Witness statement from Mr Adetokunbo Babatunde

The Hearing

6. At the outset and having regard to the defences, the following matters were not in dispute; that there was a tenancy agreement; that rent was £400; and that the rent arrears were admitted except for the sum of £1800. The tribunal asked for clarification in relation to clause 7 of the defences where the respondent indicated that she sought an abatement for rent owing from the 16 October 2021. The case was adjourned for 15 minutes for parties to consider their positions. The respondent considered that she was not due to pay rent for that month as the property had been

flooded. The applicant moved to amend the application to seek rent up to the 18 October 2020 and therefore amended the sum sued to £5800. The tribunal agreed to that motion. Accordingly, the respondent was not disputing that she owed rent of £4000; but did dispute that she owed an additional £1800.

7. Given that there was no dispute over the property; the parties to the lease; and monthly rent due, it was agreed that the respondent would lead and present her case first to the tribunal. Her agent advised that there was submitted a written statement from Mr Babatunde, reference is made to the whole terms of that statement. For the purposes of this Statement of Reasons, we would summarise some of the main points in that statement; it set out that Mr Babatunde was at the property on the 20 November 2019. The applicant had emailed the respondent prior to that date to advise that she would be coming to the property. The respondent was not at the property when the applicant attended. The applicant met Mr Babatunde. He stated that the applicant said that the respondent owed her £1800 in rent. Mr Babatunde was on holiday from Nigeria and had cash with him, and therefore gave the applicant the sum of £1800 in cash in an envelope. There was no receipt for the money given by the applicant. Mr Babatunde did not ask for one as he stated that the applicant and the respondent had a good relationship.
8. The agent for the respondent submitted that the respondent therefore had a witness confirming that the payment of outstanding rent had been made.
9. The respondent then proceeded to give evidence. She advised that when her friend, Mr Babatunde had paid the £1800 she had not been at the property. The applicant had advised that she would be at the property that day. She referred to an email lodged showing this. She advised that the applicant had met Mr Babatunde before. The applicant had complained to Mr Babatunde about the outstanding rent and spoken to him about the proposed sale of the property.
10. The respondent was not at the property that day. She advised that she had made an offer to pay the arrears every month at £100. She was not sure if this had been accepted by the applicant's solicitor.
11. She said that she had a good relationship with the applicant and just wanted peace. She admitted that she had not paid rent, but this was due to a lot of matters; she was trying to resolve the issue and her solicitor had placed an offer to the applicant to

repay. She advised that it is only the £1800 that is in dispute, and she was not at the property on the day when the alleged payment was made to the applicant by Mr Babatunde. She advised that she was trying to believe the applicant and believe Mr Babatunde. She advised that she could not say that either was lying. The respondent submitted that they could rely on the email of 19 November 2019 and the rent statement provided with the application which showed that £1800 was outstanding on 20 November 2019; and it was on this date that Mr Babatunde paid that balance.

12. Mr Gilius asked questions of the respondent. She confirmed that she had not been at the property when the applicant attended on 20 November 2019 as sometimes the applicant would say she was coming to the property and not turn up. Only Mr Babatunde was at the house that day. Mr Gilius noted that her defences had stated that the respondent's father was present that day and her agents had said there was another witness there; she advised that this was a misunderstanding, her father was in the country but had not been at the house that day.
13. The applicant's agent suggested that she had stated different things to the tribunal to explain how the £1800 was paid. She said that she had no reason to doubt that Mr Babatunde had paid the money. She advised that he was not there to give evidence as he was unwell. She advised that it was not appropriate for her to consider who was lying i.e., either Mr Babatunde or the applicant. She advised that she believed that neither the applicant nor Mr Babatunde would lie to her; she trusted them both
14. He suggested that the statement was provided by Mr Babatunde under direction from her, she denied this. He noted that Mr Babatunde had been in a relationship with the applicant previously. He suggested that one friend would support another. She advised that Mr Babatunde was a good friend but not the kind of friend who is evil and she trusted him; and the applicant was a good landlady. She confirmed that the applicant was trustworthy too.
15. The respondent's agent advised that in relation to the respondent's father being present, the respondent had at first thought he was there that day but subsequently it was clarified that he had not been there.
16. The tribunal asked questions of the respondent. In response she advised that she had always paid her rent online or by bank transfer. She advised that she had not previously paid rent by cash. She would either go to the bank or pay cash by transfer by online banking. She advised that she did not have a rent book, and she did not get

receipts per se, but she may get an email to confirm rent paid or when they met the applicant would confirm the payment had been made.

17. When asked about irregular payments she advised that this had only happened on two occasions. She advised that she had never deliberately ignored paying rent but this time it had been out with her control due to the covid pandemic. The £1800 had accrued due to her being in Nigeria. She advised that Mr Babatunde had paid the rent arrears and then she had gone back to Nigeria. After that the relationship with the applicant became strained. She advised that she did not seek acknowledgement of the rent payment of £1800. She agreed that there had been no receipt of this sum being paid.
18. The applicant then gave evidence. She advised that she had met a male friend of the respondent in 2014, but had no idea if this was Mr Babatunde. She advised that she had attended at the property on 20 November 2019. She had advised that she was attending the property the day before by email. She found that there was no one there that day. Her lawyers had served a notice to quit, and she went to the property to see if it had been received. There had been problems with delivery of it previously. There was no one there that day.
19. She was asked about the allegation that she had received £1800. She advised that she definitely disputed this, and further she would not have accepted £1800 in cash. She also advised that had she done so she would have sent an email after that to the respondent to confirm receipt. She further advised that it was not in fact £1800 owing on that date, the sum due on 20 November 2019 was £1400. She had received a payment in September of £400.
20. She advised that she acknowledged receipt of payments with the respondent. When she received rent, she would confirm receipt and she did this regularly. She advised that she had had a good relationship with the respondent. She put money into a separate RBS account and that could be seen from the bank statement supplied. She had not given out other account details to people to pay money to her. She said that she had received a number of payments over a number of years through the bank. She advised that had she received cash she would probably not have put it into the account which they had supplied the bank statements for; if she had to provide another bank account statement she could do so. She advised that it was preposterous to think that she had received the money in cash.

21. The respondents' agent asked questions of the applicant. She advised that she had been the landlord for the respondent since 2014. She advised that previous tenants had paid their rent regularly and the respondent however did not always do so. She would have to chase her up from time to time, but rent was eventually paid. As there had been a problem with rent in Autumn 2018 she had instructed her solicitors to raise an action for recovery and notice to quit had been served. She advised that there had been no rent paid since 2019.
22. She advised that she had not made contact with the respondent after November 2019 as she had passed the matter onto her solicitor. She advised that the respondent had not been in touch to advise why she was not paying rent. She was asked if the rent arrears had been to prevent her selling the property to the respondent. This was denied. She confirmed that Mr Babatunde was not at the property when she attended, no one was there. She advised that she had only gone there to check that the notice to quit had been served. The agent queried that she had not contacted the respondent for nearly a year about the arrears, and the applicant confirmed this was the case as she had passed the matter to her agents. She confirmed that she had never received the rent by any method other than bank transfer. She advised that she had no record of any money being given to her and reiterated she could supply another bank statement if required. She submitted that she would always acknowledge rent payment in an email.
23. The tribunal asked the applicant if she had spent a lot of money on raising these proceedings, and she advised that she had. She advised that she did not agree with the terms of the witness statement; no one had been at the property that day when she attended on 20 November 2019. Further, she had not received £1800 of cash that day. She advised that she would not have wanted to accept £1800 in cash, as she would have felt very uncomfortable carrying cash of that amount around. She would not have felt safe. She advised that she had instructed her lawyers to recover possession due to the rent arrears and therefore she had left matters with them to contact the respondent regarding the arrears, her first contact was when there had been flooding in the property.
24. The applicants' agents, in summing up advised that this case turned on credibility and reliability. There was an admission by the respondent that she was due for most of the sums claimed; and the only sum in dispute was £1800. He submitted that the

witness statement should be totally disregarded, and the tribunal should not attach any weight to it. Mr Babatunde was not here, and he could not be cross-examined.

25. The applicant was completely reliable and credible and candid in her evidence. She always gave a receipt when she received a payment; she attended on 20 November 2019 but there was no one in the property. The respondent in her evidence confirmed that she trusted the applicant and the tribunal should have no reason therefore to disbelieve her. He moved for the order to be granted for the sum of £5,800.
26. The respondent's agent advised that it was unfortunate that Mr Babatunde could not attend today, but that did not take away from the respondent's credibility. She was not there at the property and therefore she had no reason for disbelieving the applicant or Mr Babatunde. It was unfortunate that there was no email to show the payment had been made. She also submitted that it all comes down to credibility.

Findings in Fact

27. The Tribunal found the following facts to be established:

- a) A tenancy agreement was entered into between the Applicant and the Respondent for the property. It commenced on 19 August 2014 .
- b) Condition 5 of the tenancy agreement provided that monthly rent was £290 per month payable in advance. .
- c) The rent from at least 19 July 2019 had been increased to £400 per month.
- d) Rent arrears of £4,000 were outstanding for the period 19 December 2019 to 18 October 2019.
- e) The applicant attended at the property on 20 November 2019.
- f) The applicant had sent an email on 19 November 2019 to confirm that she would visit the property on 20 November 2019.
- g) There was no one present at the property other than the applicant during her visit on 20 November 2019.

- h) Rent arrears between 19 June 2019 until 18 December 2019 totalled £1,800 and this sum remains outstanding.
- i) Total rent arrears outstanding between 19 June 2019 and 18 October 2020 are £5,800.

Reasons for Decision

28. Section 16 of the Housing (Scotland) Act 2014 provides that the First Tier Tribunal has jurisdiction in relation to actions arising from a number of tenancies, including those arising under an assured tenancy within the meaning of section 12 of the Housing (Scotland) Act 1988. As this tenancy is an assured tenancy, we were content that we had jurisdiction to deal with this case.
29. Parties were not in dispute over the terms of the tenancy agreement; and also, that rent had not been paid from 19 June 2019. They had agreed that rent arrears totalling £4000 were still outstanding and the respondent admitted them. The dispute therefore was limited to whether a payment towards rent of £1800 had been made on 20 November 2019 to the applicant.
30. The respondent had submitted a witness statement purporting to set out that a friend, Mr Badatunde of hers had been at the property that day and had paid the applicant £1800 in cash. He did not ask for a receipt. No confirmation of payment was later provided or requested. Other than this statement there was no evidence that this sum had been paid. The witness, Mr Babatunde was not in attendance and therefore could not be examined and issues of credibility could not be considered.
31. The respondent confirmed in evidence that she had not been at the property that day, and therefore she did not know if the payment had been made. She advised that she trusted both her friend who said he had made the payment and also, the applicant who said she had not received any payment. Her evidence was that the friend, Mr Babatunde had been in the property, but as she had not been there, she could not confirm this to be the case. In addition, there had been some confusion from her as to who had been at the property; she had apparently thought at one point that her father had been at the property too and it subsequently transpired that he had not been there. She gave evidence that she had never previously paid rent by cash, and while did not appear to accept that the applicant always emailed

acknowledgement of receipt of rent, she did give evidence that the applicant had previously done so. The tribunal were unable to gain much assistance therefore in what had happened at the property on 20 November 2019 from the evidence of the respondent. The tribunal did not find the respondent particularly credible in her evidence. It appeared to us to be unrealistic to consider that a friend would pay the sum of £1800 to someone he may or may not have met in passing 5 years before. We consider it unrealistic to think that the friend would not have requested any receipt or proof of payment or, that the respondent would have contacted the applicant to confirm the payment had been made and seek a receipt, particularly given the size of the payment alleged to have been made and the fact that the applicant was seeking to evict the respondent due to rent arrears from the property. We did not place much weight on the evidence of the respondent.

32. Turning to the evidence of the applicant, she appeared to the tribunal to be credible and reliable. She presented her evidence in a straightforward way. She had supplied evidence of the bank account which rent was paid into. She had an email showing that she was going to the property and she referred to her solicitors in that email. She gave evidence of how rent payments were made; whether they were regular; that she gave receipts when rent was paid; that from 2018 there had been non-payment of rent; and she had taken steps to recover the property due to the rent arrears. We believed her evidence that she would have been uncomfortable and felt unsafe receiving £1800 in cash. We also believed her evidence that there was no one at the property that day and that she had not received £1800 from Mr Babatunde.

33. The tribunal agree that this application turns on the credibility and reliability of the witnesses. We place no weight on the witness statement. We did not find the respondent particularly credible in her evidence, and in any event she confirmed that she was not at the property that day and therefore does not know what happened. She did say however that she believed both her witness and the applicant to be honest. The tribunal preferred the evidence of the applicant and we believed that she was alone in the property on 20 November 2019 and no payment of £1800 was made to her that day. This sum therefore remains outstanding.

34. Accordingly, we consider that we should make a payment order of £5,800.00 to the applicant.

Decision

35. We grant an order in favour of the Applicant for the Sum of FIVE THOUSAND EIGHT HUNDRED POUNDS (£5,800.00) STERLING

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.

07 May 2021

Legal Member/Chair

Date