



**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/20/1206

Re: Property at 1 Auchlea Road, Aberdeen, AB16 6PB (“the Property”)

Parties:

Mrs Lissy Saji, 18 North Anderson Drive, Aberdeen, AB15 5DA (“the Applicant”)

Ms Leigh Ann Smith, 26 Fara Close, Aberdeen, AB15 6WN (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Order for payment is granted to the amount of £2766.36

Summary of Discussion

Background

1. This is an application in terms of Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). The Applicant is seeking an order for payment of the sum of £2766.36 in terms of s16 of the Housing (Scotland) Act 2014.
2. A Case Management Discussion (“CMD”) was held on 20th August 20 at 2pm at by teleconferencing. The Applicant was represented by Ms Mona Lisa Swira, trainee solicitor, Friends Legal. The Applicant did not attend. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. Neither party made representations in advance of the hearing. The

Tribunal raised that there was a document in the papers titled "Rent Protection and Legal Expenses Claim Form" and asked for a full explanation as to what this document pertained to and what was the result of the claim. The form stated the claim was for £2766.36 which is the same amount being sought for a payment order. Ms Swira was not able to provide any more information regarding this.

3. The Tribunal wanted to know –
 - a) If payment had been made by the insurance company for rent arrears then why was the Applicant seeking an order from the Tribunal?
 - b) If payment was made, then what was the amount of the payment?
 - c) If the Applicant had a contractual obligation to the insurance company to return the money paid over if she was able to recoup it by obtaining an order for repayment?
 - d) If the Applicant was to repay funds from the money obtained from the Order to the insurance company, then should the insurance company be a party?
4. The Tribunal fixed a full hearing to allow these points to be answered. The Tribunal issued a direction within the CMD note for further evidence including full legal submissions.

Hearing

5. A hearing was held on 24th September 2020 at 10am by teleconferencing. The Applicant was represented by Ms Mona Lisa Swira, trainee solicitor, Friends Legal. The Applicant did not attend. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent did not make representations in advance of the hearing. Ms Swira confirmed that Friends Legal were the appointed by the ARAG plc who are the insurance company who the Applicant applied made a claim for payment of the rent arrears. They were acting on behalf of the Applicant. The purpose of the raising this action was to pursue payment by obtaining a payment order to try to mitigate the loss of the arrears prior to making payment of the claim. The claim has not yet been paid. The insurance company will deal with that once the Order has been granted. The Tribunal was satisfied that the claim was not being paid in addition to the Order being granted but that the Applicant was pursuing the correct legal process before a claim for arrears was successful. The Tribunal was satisfied that it was appropriate for the Order to be granted.

Findings in Fact

6. The parties entered into a Short Assured Tenancy on 20th January 2017 to 19th January 2018 and continued on a month to month basis thereafter. The

rent payments of £775 per calendar month which were due on 1st day of each month.

7. The Housing and Property Chamber received an Application on 30th March 2020.
8. The Respondents have persistently not made rent payments. There have been more than 3 missed payments. The amount outstanding has risen to £2766.36.
9. There has been payment of Housing Benefit to the Applicant. However, there was a shortfall between the rent charge and the Housing Benefit payment.
10. The Respondent moved out of the Property on 30th August 2020.
11. The Applicant has not received payment for the outstanding rent arrears from ARAG plc in respect of her claim for the rent arrears.

Decision

12. The Applicant is entitled to an order of payment of £2766.36 by the Respondent. The Order was granted against the Respondent.

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.

G Miller

Legal Member/Chair

24/09/2020
Date