



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/21/1067

Re: Property at 32 Coronation Street, Monkton, KA9 2QW (“the Property”)

Parties:

Miss Janette Mitchell, 12 Rosemount Gardens, Prestwick, KA9 2DS (“the Applicant”)

Mr David Ellis, Mrs Ashley Ellis, 32 Coronation Street, Monkton, KA9 2QW (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:

Background

This Application called for a Hearing by conference call at 10 am on 4 October 2021. The Applicant was present together with her solicitor Mr Gilius. The Second Respondent was personally present. There was no appearance by or on behalf of the First Respondent, Mr David Ellis.

Mr Ellis had been personally present at the previous Case Management Discussion (CMD) which took place on 11 August 2021 in respect of this Application. The date and time of this Hearing had been specifically agreed at that CMD. The details and information about how to join the conference call were also sent out to the Respondents by post on 30 August 2021. Neither of the Respondents had complied with the

Directions that were made at that CMD which had ordered any defence to be relied on to be fully set out in writing within 21 days. That Direction was made because Mr Ellis had made reference at the CMD to seeking to rely on a possible defence of rent abatement at the Hearing.

On the basis that Mr Ellis had not complied with the Directions made and was not in attendance despite having been properly made aware of the details of today's Hearing, the Tribunal decided to proceed in his absence.

Prior to the Hearing, The Applicant had competently made an Application to amend the sum claimed to £6,525.00. The Applicant had also lodged an updated rent statement that purported to take account of the payments which the Applicant said had been made by the Respondents in cash and which were referred to by Ms Ellis at the last CMD.

The Hearing

At the outset of the Hearing, the Tribunal considered whether there were any preliminary matters. Whilst parties were ready to proceed, Ms Ellis made it clear that she was not disputing that rent was lawfully due but still unpaid but that the only issue remained the exact figure. This was because there seemed to be a dispute about the exact sums said to have been paid over in cash to the Applicant. Ms Ellis conceded that a Payment Order should be made as there was no reason the rent hadn't been paid but that she felt more had been paid in cash than had been accounted for in the up-to-date rent statement lodged by the Applicant.

Mr Gilius stated that the Applicant wished to resolve matters pragmatically and that the Applicant may be prepared to discuss a resolution about this particular matter with Ms Ellis directly. Mr Gilius confirmed that the Applicant was actually Ms Ellis' mother which had not hitherto been mentioned.

At this point the Tribunal decided to adjourn, with the Tribunal members leaving the call to allow the parties an opportunity to resolve this particular dispute. The Tribunal had made it clear to parties that this was entirely voluntarily and if necessary, the Tribunal would work through its processes to determine the Application if no resolution could be reached. Parties however were keen to try and resolve matters and so the Tribunal adjourned with parties staying on the call out with the presence of the Tribunal.

When the Tribunal reconvened parties reported that they had reached an agreement in respect of the matter of the cash payments supposedly made.

Accordingly, Mr Gilius and Ms Ellis confirmed that an agreed figure of £6,400.00 as the total outstanding rent had been settled on. It had also been agreed that no award of interest should be made on that sum in any Payment Order to be made.

On that basis that Mr Ellis was not present despite having been properly notified of the Hearing and had not complied with the Directions, The Tribunal was content to allow the Application to be resolved in this manner.

Having heard from parties and considered the Application, the Tribunal made the following findings in fact.

Findings in Fact

- I. *The parties entered into a tenancy agreement in respect of the Property which commenced on 1 July 2013;*
- II. *The Applicant was the landlord under this tenancy and the Respondents were the tenants;*
- III. *The Respondents fell into rent arrears;*
- IV. *The sum of £6,400.00 is lawfully due by the Respondents to the Applicant under the terms of the tenancy between the parties but remains unpaid.*

Reasons for Decision

Having made the above findings in fact, the Tribunal made a Payment Order against the Respondents in the sum of £6,400.00. No award of interest was made.

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

Date: 4th October 2021