



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 (“2014 Act”)

Chamber Ref: FTS/HPC/CV/21/1269

Re: 28 Broomberry Drive, Gourock, Inverclyde, PA19 1JY
 (“the Property”)

Parties:

Ms Doreen Leon, 105 Octavia Terrace, Fort Matilda, Greenock, PA16 7PY
 (“the Applicant”)

Ms Dawn Leighton, 28 Broomberry Drive, Gourock, Inverclyde, PA19 1JY
 (“the Respondent”)

Tribunal Members:

Pamela Woodman (Legal Member) and Frances Wood (Ordinary Member)

Present:

The case management discussion in relation to case reference FTS/HPC/CV/21/1269 took place at 10am on Wednesday 28 July 2021 by telephone conference call (“**the CMD**”). The Applicant was not present at the CMD but was represented by Mr Kenneth Caldwell of Patten & Prentice LLP (“**Applicant’s Representative**”). The Respondent was not present at the CMD and had not informed the Tribunal that she would not be present. The clerk to the Tribunal was Mrs Caitlin Munro. This case was conjoined with the case with case reference FTS/HPC/EV/21/1268.

Decision (in the absence of the Respondent)

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

BACKGROUND

1. An application was made to the Tribunal under section 16 of the 2014 Act for civil proceedings in relation to matters associated with a tenancy under the Housing (Scotland) Act 1988 (“**1988 Act**”). The application was made in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for

Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended, (“**2017 Regulations**”). More specifically, the application was made in terms of rule 70 (*Application for civil proceedings in relation to an assured tenancy under the 1988 Act*) of the HPC Rules.

2. The order sought was an order for payment.
3. The application dated 26 May 2021 was accompanied by copies of various documents, including:
 - a. Short assured tenancy agreement between the Applicant and the Respondent in respect of the Property dated 9 August 2013 (“**Tenancy Agreement**”); and
 - b. Statements of account in respect of the periods (i) from 8 August 2019 to 11 August 2020 and (ii) from 8 March 2020 to 13 May 2021 (“**Original Rent Payments Schedules**”), which showed an outstanding balance of rent of £9,940.60 as at 13 May 2021.
4. A notice of acceptance of the application was issued by the Tribunal dated 10 June 2021 under rule 9 of the HPC Rules (“**Notice of Acceptance**”), which confirmed that the application paperwork had been received by the Tribunal on 27 May 2021.
5. The Applicant’s Representative and the Respondent were each respectively sent a letter by the Tribunal dated 16 June 2021 confirming that the application had been received, intimating the date and time of the CMD and noting that written representations from the Respondent must be received by 7 July 2021. The Respondent did not provide any written representations to the Tribunal in advance of the CMD.
6. The Tribunal was provided with a certificate of execution of formal service from Euan McLaughlin, sheriff officer of Stirling Park, stating that the case papers, letter and other documentation were served on the Respondent personally on 17 June 2021.
7. On 1 July 2021, the Applicant’s Representative provided an updated rent payments schedule in respect of the period from 8 March 2020 to 1 July 2021 (“**Updated Rent Payments Schedule**”) which showed an outstanding balance of £10,915.60 as at 1 July 2021 and applied to the Tribunal to amend the sum claimed. The application was made more than 14 days in advance of the CMD and, in terms of HPC Rule 14A, the Tribunal consented to the amendment.
8. This decision arises out of the CMD.

PROCEEDINGS

9. The Applicant’s Representative confirmed that there had been no contact from the Respondent either with him/his firm or the letting agents (whom he had checked with on the morning of the CMD).

10. The Applicant's Representative confirmed that no payment had been made by the Respondent since 11 December 2020 and that the Updated Rent Payments Schedule accurately set out the amount outstanding as at 1 July 2021. He noted that further amounts had now also fallen due but acknowledged that the amount claimed was limited to that previously intimated.
11. The Applicant's Representative explained that there had been discussions with the Respondent during 2020 about a pattern of arrears and arrangements made to address these, at which time the Applicant had an expectation that a lump sum payment would be made in respect of arrears but no such payment had been forthcoming.
12. The Applicant's Representative referenced the entry on 10 September 2020 entitled "DWP Payment 28.06-27.07.20" for £59.40 and noted that there were no other entries for benefit payments, which in any event would not have been sufficient to meet a rent of £975 per month. It was noted that, through the 3 entries on the statement of account on 10 September 2020, the Respondent appeared to have been given credit for an amount of £59.40 and so had not suffered detriment in that respect with the outstanding balance being reduced by that amount.

FINDINGS OF FACT

13. The Applicant and Peter Leon are the registered proprietors of the Property which is registered under title number REN95722. The Applicant is the registered landlord in respect of the Property. The tenancy granted under the Tenancy Agreement was granted only by the Applicant. However, the tenancy appears to have operated in this way for a number of years.
14. The Tenancy Agreement contained the following terms:
 - a. The initial rent was £975 monthly and was to be reviewed annually;
 - b. The rent was payable in advance from 9 August 2013 by equal payments of cleared funds on the 1st of each month; and
 - c. A deposit of £1,075 was payable on signing the Tenancy Agreement. This was noted on the Updated Rent Payments Schedule as being "held by tenancy as at 01/07/2021".

REASONS FOR DECISION

15. The Tribunal was satisfied, on the balance of probabilities, that arrears of rent of £10,915.60 were outstanding as at 1 July 2021 and as at the date of the CMD.

DECISION

16. The Tribunal decided that an order be granted against the Respondent for payment of £10,915.60 (ten thousand nine hundred and fifteen pounds and sixty pence sterling).

17. The Tribunal refused the request from the Applicant's Representative for interest at a rate of 4% per annum on the amount claimed.
18. The order referred to in the preceding paragraph was intimated orally to the Applicant's Representative by the Legal Member during the CMD.

Right of Appeal

In terms of Section 46 of the Tribunals (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.

P S Woodman

Chair (Legal Member)

28 July 2021

Date