



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/21/1732

Re: Property at 95 Whiteside Court, Bathgate, EH48 2TP (“the Property”)

Parties:

Mr Steven Ward, Mrs Janine Ward, Syke, Bo'ness Road, Linlithgow, EH49 7RQ (“the Applicants”)

Mr Artur Spendel, Mrs Agnieszka Spendel, 95 Whiteside Court, Bathgate, EH48 2TP (“the Respondents”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision (in absence of the Respondents)

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

Background

This was an application for a payment order dated 19th July 2021 and brought in terms of Rule 70 (Application for civil proceedings in relation to an assured tenancy under the 1988 Act) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicants sought payment of all arrears in rental payments in relation to the Property from the Respondents, which at the time of the application were noted as being £4,713.00, and provided with their application copies of a short assured tenancy agreement and a rent arrears statement.

The short assured tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

The Respondents had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 8th September 2021, and the Tribunal was provided with the executions of service.

Case Management Discussion

A Case Management Discussion was held at 14.00 on 6th October 2021 by Tele-Conference. The Applicants did not participate, but were represented by Mrs Orr, letting agent. The Respondents did not participate, nor were they represented. The Respondents had not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Tribunal was invited by Mrs Orr with reference to the application and papers to grant an order for payment of the sum of £5,662.00. Mrs Orr referred to the rent arrears statement provided at the time of this application noting the rent arrears were then £4,713.00. Since that time, three further monthly rental payment of £583.00 had accrued, and the Respondents had made a further payment of £800.00 on 3rd August 2021.

Mrs Orr explained that the original monthly rental of £550.00 specified in clause 3 of the lease had been increased in 2018 to £583.00.

Statement of Reasons

Section 16 of the *Housing (Scotland) Act 2014* provides as follows:

“16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3) Part 1 of schedule 1 makes minor and consequential amendments.”

Accordingly, the Tribunal has jurisdiction in relation to claims by a landlord (such as the Applicants) for payment of unpaid rental against a tenant (such as the Respondents) under a short assured tenancy such as this.

The Tribunal considered the terms of the short assured tenancy agreement, the rent arrears statement, and Mrs Orr's submissions, and was satisfied that this disclosed an outstanding balance due by the Respondents to the Applicants in respect of rent arrears of £5,662.00. Accordingly, the Tribunal made an order for payment of the sum sought.

Decision

In these circumstances, the Tribunal made an order for payment by the Respondents to the Applicants of the sum of £5,662.00.

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: Neil Kinnear

Date: 06/10/2021