



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/21/1797

Re: Property at 114 Melbourne Avenue, East Kilbride, G75 8DP (“the Property”)

Parties:

Mr Colin Carr, Mr Eric Kinnear, 9 Glamis Avenue, Glasgow, G77 5NZ; 27 Drummond Way, Glasgow, G77 6XW (“the Applicant”)

Miss Rachel Mallon, Mr Callum Green, 12 Spruce Grove, East Kilbride, G75 9LU (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to an order for payment from the Respondents amounting to £ 5292.21 (FIVE THOUSAND TWO HUNDRED AND NINETY TWO POUNDS AND TWENTY ONE PENCE)

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 £9232.21 in terms of s16 of the Housing (Scotland) Act 2014. The application sought rent arrears of £4392.21 and cost for damage to the Property amount to £4840.

Case Management Discussion (“CMD”)

2. A Case Management Discussion (“CMD”) was held on 4th October 2021 at 11.30am by teleconferencing. The Applicant was represented by Mr Stuart Girdwood, Guardian Lets and Sales. The Applicant did not attend. The Respondents were both present. Mr Girdwood informed the Tribunal that his

position remained that he was seeking the outstanding amount of £9232.21. He informed the Tribunal that the Respondents had not given notice to quit the Property and as such the tenancy was ongoing. The last payment was in March 2021. The arrears stood at £5292. The Tribunal queried if there were receipts for the repairs. Mr Girdwood confirmed that the repairs had not yet been undertaken as the Property had not yet been terminated. Photos that had been taken and submitted were from when the SSPCA had received an animal welfare concern report. The letting agency accompanied the SSPCA into the Property and took the photos then. Mr Girdwood said that he was able to list the cost of the repairs through his experience of being a letting agent, he has had to deal with similar repairs in the past. The Tribunal considered this too early as the repairs have not yet been undertaken. This would need to be done with receipted invoices. However, until that point there had been no financial loss. It could be that once the Property is returned that the repairs have been completed prior to the return of the keys or that there could be more damage. Mr Green admitted liability for the full amount. He had not terminated the tenancy and his belongings remain in it. He is living at a friend's house. He accepted that he had not paid the rent for some time. He disputes the damage to the Property as there was damage when he moved in. Ms Mallon said that she was not disputing any of the rent arrears up until February 2021. She left the Property at that point. She does not consider herself to be liable from February 2021 but does accept liability for the arrears up until that point. Ms Mallon told the Tribunal that she had emailed the letting agents to say that she was leaving. Ms Mallon had to apply for benefits as a single person when she separated from Mr Green. This caused her financial hardship. Ms Mallon was keen to enter into a repayment agreement with the Applicant for the amount that she considers that she was due. At that stage Mr Girdwood reserved his position though would accept any payments to the admitted debt which remains outstanding. Mr Girdwood disputed that Ms Mallon would be able to leave the tenancy by giving notice and considered her still liable for the ongoing rent. Mr Girdwood noted that the arrears were £5292. The Tribunal noted that he could amend the amount being sought by contacting the Housing and Property Chamber in writing 14 days prior to any future CMD. This would allow the Respondents to be notified of the increase of the amount. The Tribunal was not persuaded that the damages cost could be included within this application as there have been no damages repaired yet. The Tribunal noted that the arrears will continue to increase until Mr Green leaves the Property and his notice period has expired.

3. The CMD was continued to a new date of 10th November 2021 at 10am by teleconferencing. The purpose of the continuation was to allow Ms Rachel Mallon, to evidence her notice to leave the Property by lodging a copy of the email she sent to the letting agent and allow her time to seek representation if she wished to obtain it. The Applicant disputed that she can leave a joint tenancy by giving notice and will make a submission on this point. The Applicant was to advise of any increase amount sought by writing to the Housing and Property Chamber with the increased amount no less than 14 days prior to the next CMD.

4. On 8th October 2021, the Applicant's representative emailed to increase the sum sought for the rent arrears to be increased to £5292.21.

The CMD

5. A Case Management Discussion ("CMD") was held on 4th October 2021 at 11.30am by teleconferencing. The Applicant was represented by Mr Stuart Girdwood, Guardian Lets and Sales. The Applicant did not attend. The Respondents were both present.
6. Ms Mallon was not able to produce copies of the emails she sent as they were on an old phone that was broken. She accepted liability for the whole amount. Mr Green accepted liability for the whole amount of the arrears. He still has not terminated the tenancy. The Tribunal noted that he will continue to be liable for the ongoing rent charge until the tenancy has been terminated. He is aware of this point.
7. Mr Girdwood was still seeking £5292.21 for the rent arrears. He noted that all the emails for the two accounts that his company hold go to the one account. No emails are deleted from it. He was not able to locate any email from Ms Mallon. The current outstanding arrear stand at £5742.21. The Applicant has instructed solicitors to act regarding the eviction.
8. The Tribunal has considered the claim for the damages. The Tribunal was not satisfied that the costs have yet occurred. The Applicant cannot be satisfied of the extent of the damage until the Property has been returned to them. Once the repair works have been done a claim can be made for the cost of the repairs.

Findings in Fact

9. The parties entered into a Short Assured Tenancy with the commencement of the tenancy on 25th August 2016 for a 6 month period until 26th February 2017 and on a month to month basis thereafter. The rent payments of £450 are due by the 25th day of each month.
10. The Housing and Property Chamber received an Application dated 26th July 2021.
11. The Respondents have persistently not made rent payments. There have been more than 3 missed payments. The amount outstanding has risen to £5742.21, which is beyond that which was sought in the application.
12. There are no outstanding Housing Benefit issues.
13. The arrears due to the Applicant amounts to £5292.21.

Reasons for Decision

14. The Respondents have failed to make payment of the rent lawfully due in terms of the lease between the parties. The Applicant has lodged a rent statement for the period 25th August 2016 to 25th July 2021 in which payments have been missed amounting to £5292.21 in rent arrears. The Tribunal was satisfied that there were no other issues of reasonableness before them. The Tribunal decided that the Respondents have persistently not paid the rent and were in arrears. As a consequence the Applicant was entitled to be granted the Order for payment for outstanding rent arrears of £5292.21 against the Respondent.
15. The Tribunal was not satisfied that the claim for £4840 was competent as the Property had not been returned to the Applicant. It is not known what state the Property will be in when it is returned. The Applicant has not had any loss yet for repairs for the damage. Once repairs have been completed a claim can be made at that point. The Tribunal refused this part of the application.

Decision

16. The Applicant is entitled to an order for payment of £5292.21 by the Respondents. 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.



Legal Member/Chair

10th November 2021

Date