



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/22/1437

Re: Property at 16 Bridgend Cottages, Inverkip, PA16 0AN (“the Property”)

Parties:

Trustees of Sir Houston Mark Shaw Stewart Testamentary Trust, Ardgowan Estate, Ardgowan House, Inverkip, PA16 0DW (“the Applicant”)

Mr Simon Pugh, 16 Bridgend Cottages, Inverkip, PA16 0AN (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mrs F Wood (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be granted in favour of the Applicant in the sum of £8,278.

Background

1. This is an application dated 16th May 2022 and made in terms of Rule 111 of the Procedural Rules. The Applicant was seeking an order for payment in the sum of £6453.45 in respect of rent arrears arising from a tenancy agreement in respect of the Property which commenced on 15th November 2019. The sum sought included a sum of £18.45 in respect of the emptying of a septic tank, debited to the Respondent’s account on 5th May 2022. The Applicant lodged a copy of the tenancy agreement and a tenant ledger.
2. By application dated 10th October 2022, the sum sought was amended to £7,913.45.
3. By application dated 17th October 2022, the sum sought was amended to £8,278.
4. A Case Management Discussion (“CMD”) took place by telephone conference on 28th October 2022. The Applicant was represented by Mr Nicholas Wright

and Ms Caroline McMillan. The Respondent was in attendance. The application was heard together with an application for an eviction order under ground 12 – FTS/HPC/EV/22/1436. The Respondent indicated he was defending the application as the ground was not met and the arrears were not due. The Respondent claimed to be withholding the rent due to repairing issues. It was agreed both applications should proceed to an evidential hearing to ascertain whether the rent is outstanding and lawfully due. Parties were informed that the Tribunal would expect to see evidence from both parties in relation to the reporting of repair issues, and the current condition of the Property, and that the Tribunal would expect to see evidence in support of the claim that the Respondent is genuinely exercising the remedy of retention, including a bank statement showing the sum due.

5. Parties were notified by letter dated 13th December 2022 of a hearing set down for 8th February 2023.
6. By email dated 24th January 2023, the Applicant lodged an Inventory of Productions, including a rent statement showing a sum outstanding of £9373.45.

The Hearing

7. A hearing took place by telephone conference on 8th February 2023. The Applicant was represented by Mr Nicholas Wright and Ms Caroline McMillan. The Respondent was not in attendance.
8. The Tribunal considered the terms of Rule 29 of The First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) and considered that the Respondent had been notified of the hearing. The Tribunal decided to proceed with the application upon the representations of the parties present and all the material before it.
9. The Applicant’s representatives said the Respondent has not paid rent for two years. He has made no attempt to confirm that he is withholding rent, and they do not believe that there was a case for withholding rent. Following work on the roof and installation of secondary glazing, small remedial works which remained to be done to the Property had been completed recently. Roof works were carried out initially by the Respondent, and the cost was offset against his rent. Further works were later carried out by another roofing contractor, who stripped and re-slatted the roof. There were no serious problems that would justify withholding rent. The Respondent had, on occasion, carried out works himself without prior permission, and had requested payment thereafter. They were not prepared to pay for unauthorised works. Although the Respondent had referred to an independent surveyor and a solicitor, no legal correspondence or independent report had been received by the Applicant.
10. The Applicant’s representatives said the Respondent was using an industrial-style gas blow heater in the Property, with the windows closed. They believed this was causing condensation issues. Furthermore, the Respondent is a smoker and he has covered the smoke detectors in clingfilm, which is of great

concern to the Applicant. Responding to questions from the Tribunal, the Applicant's representatives said they believed the system for detecting fires complies with the relevant legislation for rented properties.

11. Recent works have been carried out to finish off the facings on the secondary glazing that was previously installed. The Applicant's contractor was satisfied that the hallway wall was dry and that any marking on the wall was historic.
12. There was some discussion about the recent rent statement submitted. The Applicant had not served this on the Respondent; therefore, it was not accepted as a competent application to increase the sum sought.

Findings in Fact and Law

13.
 - (i) Parties entered into a private residential tenancy that commenced on 15th November 2019.
 - (ii) Rent was due in the sum of £365 per month.
 - (iii) Rent lawfully due in terms of the tenancy agreement has not been paid by the Respondent.
 - (iv) The Applicant is entitled to recover rent lawfully due.
 - (v) In terms of the tenancy agreement between the parties, the Respondent is responsible for paying bills for services.
 - (vi) The Respondent has failed to pay a bill in respect of emptying of the septic tank.
 - (vii) The Applicant is entitled to be recompensed for the tenant's failure to pay for emptying of the septic tank.

Reasons for Decision

14. The Tribunal took into account the written representations lodged by the Applicant, which showed a timeline of correspondence between the parties, as follows:
15. In 2020 the Respondent carried out pre-authorized works to the roof and was paid by offsetting against rent outstanding.
16. No rent was paid in July, August or September 2020, with no reference in advance by the Respondent to withholding due to repair issues.
17. On 21st September 2020 (page 6/67) the Respondent mentioned some repairing issues, but did not state he was withholding rent.

18. Having been chased up by the Applicant, the Respondent replied on 3rd November 2020 (7/67) and apologised for not paying rent, stating that he had the cash at home, but was working long hours, and that he would be in the following day if the Applicant wished to come for the money. The Respondent did not pay the rent, and arrears accrued.
19. On 25th March 2021, in response to being chased up again by the Applicant, the Respondent said he would pay £1000 at the end of March and £1000 the following month if something was done [presumably about the roof and windows], but would be contacting a solicitor. The Respondent paid £1000 on 6th April 2021.
20. On 1st December 2021, the Respondent was advised that the roofing work was complete and provided with a copy of his rent balance of £4,245.
21. On 16th December 2021 (page 9/64), on being contacted by the Applicant, the Respondent stated that he would clear the arrears of £4,245 by the end of January.
22. Following attempts by the Applicant to contact the Respondent, he replied by email on 2nd February 2022 (9/67), stating that he would have the money within the next week. The Tribunal noted that this suggested the money was not readily available for payment. The Respondent said he would be happy to pay all of the back rent, and one year's rent in advance, but having gone through another winter where the heating was disappearing through the windows, he would like a concrete date for replacement or refurbishment of the windows.
23. A quote was obtained for work to the windows, and on 5th April 2022 (10/67), the Respondent stated that he had no problem paying the rent arrears and that he had the money. He stated that he expected insulation to be fitted as well as the windows and requested a copy of the quote for the windows. His request was refused.
24. On 6th April 2022 (11/67) the Respondent stated that he had an independent surveyor coming to the property after the windows were done to do a report on damp and energy efficiency, after which he would seek legal advice and take the Applicant to court, stating "*I can and will pay the back rent when the property has had all the relevant updates.*" The Respondent stated that the Applicant would hear from his solicitor soon.
25. The Respondent did not appear to have proactively contacted the Applicant in advance on any occasion, to state that he was withholding rent, as might be expected to show good faith,. Although the Respondent mentioned withholding rent in respect of the roof, he failed to make payment of the outstanding rent when the work to the roof was carried out. He then failed to make payment of the outstanding rent when the window repairs were carried out.

26. The Respondent failed to lodge any evidence to show that he was justified in withholding rent in respect of repairs, that he withheld rent in good faith, and that he had the sum ready to make payment. The Respondent also failed to attend at the hearing to put forward any evidence in this regard.
27. While the Tribunal considered that there were issues in respect of necessary repairs, which may have indicated a failure of the repairing standard, the evidence suggested that the Respondent had got into difficulty with his rent on occasions where no mention was made of withholding rent.
28. Even if the Respondent was justified in withholding rent, the works have now been carried out to the roof and the windows, yet the Respondent has not made payment of the withheld rent. He has not raised an application in terms of the repairing standard and he has produced no evidence to support his assertion that insulation is required, or to justify continuing to withhold rent in this regard.
29. The Tribunal considered that the outstanding arrears are lawfully due. The Respondent has failed to make payment of rent lawfully due. The Applicant is entitled to recover rent lawfully due in terms of the tenancy agreement between the parties.
30. The Respondent undertook in terms of the tenancy agreement to make payment for services, which would include emptying of the septic tank. The Respondent has failed to make payment for this service and the Applicant is entitled to recompense for this sum.

Decision

31. An order for payment is granted in favour of the Applicant in the sum of £8,278.

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

8th February 2023
Date