



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/18/2534

Re: Property at 20 Eastwood Avenue, Stranraer, DG9 8DS (“the Property”)

Parties:

MS Lorna Jane Deazeley, 15 Barbreck Crescent, Gartcosh, Glasgow, G69 8FW (“the Applicant”)

Ms Gillian McColm, 19 Murrayfield Gardens, Stranraer, DG9 7NL (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondent)

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

An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 70 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for payment of £1400 for non-payment of rent under the terms of an assured tenancy for the Property.

The application contained:-

- a copy of the Tenancy Agreement;
- AT5 form
- Copy Letter informing the tenant of a rent increase
- Copy bank statements showing evidence of late payment and non-payment of rent

The Applicant attended today’s case management discussion. There was no appearance from the Respondent.

I was satisfied that the Respondent had been given formal notice of today's case management discussion and I was prepared to proceed with it in her absence.

The Hearing

The applicant referred me to the terms of the tenancy agreement showing that the tenancy had been entered into in September 2015; the rent was stipulated as being £450 per month. There was reference to a second tenant, however the applicant advised that the other tenant had left the property last year and she was only seeking an order against the respondent.

She advised that the respondent had often been late with her rent and had also left the property in poor condition. She further advised that she had letters which had been returned to her from the post office as undelivered and she indicated that the respondent had ignored her correspondence. She advised that she had written to the respondent suggesting that she seek advice to assist her with her finances. She had also contacted the benefits agency to try and arrange to have the rent paid direct, however they advised that that would not be able to pay rent direct to her unless the respondent instructed them to do so.

She advised that the respondent had not paid anything to her in terms of the rent arrears. That the rent arrears were still outstanding, and she also considered that she was in fact due rent for October as well.

She made reference to the letter dated 16 April 2018 which she had sent the respondent advising her that she wanted to increase the rent. She advised that she had had no contact from the tenant either agreeing or disputing the rent increase. She advised that she had not asked the respondent to enter into a varied lease agreement varying the terms of the rent.

The applicant advised that the Respondent had been given notice to leave the Property last year; she had commenced eviction proceedings however the respondent had abandoned the property sometime before 11 October 2018.

The Agent advised that as at today's date the outstanding sum due is £1400.

Findings in Fact

The Tribunal found the following facts to be established:

A tenancy agreement existed between the Applicant and the Respondent for the Property. It had been entered into on 1 September 2015.

The lease provides that rent was payable at a rate of £450 per month.

Condition 7.1 of the tenant agreement provides that an obligation of the tenant is to pay rent in advance on the rent days.

That the Respondent had been served with notice by the landlord to leave the Property on 11 October 2018.

That bank statements showed payments being made by "G McColm" in April, May, and June 2018. That the bank statement for July, August and September 2018 showed no payments by the respondent.

Reasons for Decision

Section 16 of the Housing (Scotland) Act 2014 provides that the Tribunal has jurisdiction in relation to actions arising from a number of tenancies, including assured tenancies within the meaning of section 12 of the Housing (Scotland) Act 1988.

As this tenancy is an assured tenancy I am content that I have jurisdiction to deal with this case.

There was no response or appearance from the Respondent but she had been made aware of today's hearing.

The tenancy agreement created obligations between the landlord and tenant, one of those obligations related to the tenant being responsible for payment of rent.

There was evidence of non-payment of rent for the months of July, August and September 2018.

I consider that the respondent was due to pay rent during this period, and it had not been paid by her and therefore it was due and outstanding to the applicant.

I am not however persuaded that the proposed increase to the rent was validly made in accordance with the statutory rules, and there was also no evidence that the tenant had agreed to the rent increase. On that basis I do not consider that I am able to award the full sought by the applicant.

I will grant and order for the reduced sum of £1350, being three months' rent arrears at the rate of £450.

Decision

I grant an order in favour of the Applicant for ONE THOUSAND THREE HUNDRED AND FIFTY POUNDS (£1350.00) STERLING 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.

Ms Melanie Barbour

8. 2. 19

Legal Member/Chair

Date