

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/18/3434

Re: Property at 1 Upper Arbeadie Road, Banchory, Aberdeen, AB31 4EW (“the Property”)

Parties:

Mrs Margaret Blackhall, 62 North Deeside Road, Aberdeen, AB15 7PL (“the Applicant”)

Miss Jessica Powell, 11 Station Brae, Peterculter, Aberdeen, AB14 0PX

Tribunal Members:

Ruth O'Hare (Legal Member)
Mike Scott (Housing Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment in the sum of Seven hundred and eighty five pounds (£785.00) against the Respondent

Background

- 1 By application dated 14 December 2018 the Applicant sought an order for payment of outstanding rent arrears in the sum of £385 against the Respondent. In support of the application the Applicant submitted the following documents:-
 - i. Tenancy Agreement between the Applicant and Respondent dated 10th August 2016 and 17th August 2016
 - ii. Minute of Lease dated 3th August 2018 and 1st September 2018
 - iii. Rent Account from 26th August 2017 to 25th November 2018
 - iv. Bank Statements

- 2 On 18th December 2018 the Applicant emailed the Tribunal to confirm that the Respondent had agreed that the deposit of £1100 could be applied to the arrears.
- 3 By Notice of Acceptance of Application dated 18th January 2019, the Legal Member with delegated powers of the Chamber President intimated that there were no grounds for rejection of the application. A Case Management Discussion was therefore assigned for 26th February 2019.
- 4 A copy of the application together with supporting documentation and notification of the Case Management Discussion was served on each Respondent by Sheriff Officers on 5th February 2019.
- 5 On 1st February 2019 the Applicant emailed the Tribunal to request the sum claimed be amended to £785. This was on the basis that the Respondent had not paid the rent due and the Applicant was no longer willing to waive a payment of £500 which had been offered on the condition that the rent was paid.

The Case Management Discussion

- 6 The Case Management Discussion took place at the Dundee Carers Centre on 26th February 2019. The Applicant was present and represented by Peter Blackhall. The Respondent was not present.
- 7 The Tribunal noted an email had been received from the Respondent on the day of the Case Management Discussion requesting a postponement on the basis that she was unable to attend due to childcare commitments. The Respondent had however provided a response to the application and to the Applicant's subsequent written representation and had provided an email chain between herself and the Applicant in support of that. On that basis the Tribunal considered it had sufficient information in order to consider the issues at the Case Management Discussion and therefore determined to proceed.
- 8 Having considered the verbal and written representations from the Applicant and the written representations from the Respondent and in accordance with Rule 17(3) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure, the Tribunal identified the issue to be resolved the sum of arrears due to be paid by the Respondent to the Applicant. In particular the matters in dispute were whether there was an agreement between the parties, or it ought to be have been assumed by the Respondent, that the deposit would be applied to the balance and whether the sum of £500 should have been waived from the outstanding balance of arrears. A hearing was fixed for 24th April 2019 and the parties were directed to lodge a List of Documents and List of Witnesses no later than 10th April 2019.

9 By letter received on 11th April 2019 the Applicants submitted the following documents:-

1. Email from the Applicant to the Respondent dated 2 October 2018;
2. Copy letter from the Applicant's Representative to the Respondent undated;
3. Email from the Applicant to the Respondent dated 20th November 2018.

No documents were received from the Respondent. Neither party submitted a List of Witnesses.

The Hearing

10 The Hearing took place on 24th April 2019 in the Credo Centre, Aberdeen. The Applicant was present and represented again by Peter Blackhall. The Respondent did not attend.

11 Mr Blackhall advised that he had received no contact from the Respondents. The Tribunal was satisfied on the basis on the information before it that it was able to make a determination of the application and no further evidence from the Applicants was required.

Findings in Fact and Law

12 The Applicant entered into a Tenancy Agreement with the Respondent dated 10th August 2016 and 17th August 2016 in respect of the Property.

13 In terms of Clause 4 of the Tenancy Agreement the Respondent undertook to pay rent at the rate of £1100 per month.

14 The tenancy between the parties was terminated on 25th November 2018. As at the date of termination rent arrears in the sum of £1885 were outstanding. The Respondent is liable for payment of the outstanding arrears in terms of Clause 4 of the said Tenancy Agreement.

15 The deposit of £1100 was applied to the outstanding balance of arrears. This was with the express agreement of the Respondent. There was no prior agreement between the parties that the deposit would be applied to the arrears of rent.

16 The Applicant agreed to waive a payment of £500 on the basis that the outstanding rent was paid in full by 20th November 2018. The Respondent failed to make payment in accordance with this timescale.

Reasons for Decision

- 17 Having considered the verbal and written representations from the Applicant the Tribunal was satisfied that it was able to make sufficient findings to determine the case. The Tribunal was satisfied that the Respondent had been given fair notice of the Hearing and had been given the opportunity to participate in the proceedings.
- 18 The Tribunal agreed to amend the sum sought to £785 as requested by the Applicant in terms of her email of 1st February 2019. The Tribunal was satisfied that the Respondent had received fair notice of the amendment.
- 19 The Tribunal thereafter accepted based on its findings that the sum of £785 is lawfully due by the Respondent by virtue of the terms of the Tenancy Agreement between the parties and the supplementary documentation submitted by the Applicant. The Tribunal found the submissions put forward by the Applicants to be credible and the Respondent had not sought to put any evidence forward to counter same. She had not attended the Case Management Discussion, nor the Hearing.
- 20 The Tribunal therefore determined to make an order for payment in the sum of £785.
- 21 The decision of the Tribunal was unanimous.

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

R O'Hare

Legal Member/Chair

24/4/19
Date