

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 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/18/0998

Re: Property at Carcary Lodge, Farnell, Brechin, DD9 6UD (“the Property”)

Parties:

Southesk Settlement, Estate Office, Haughs of Kinnaird, Brechin, DD9 6UA (“the Applicant”)

Mrs Christine Stewart, 21 The Ha-en, Forfar, DD8 2BU (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member), Frances Wood (Ordinary Member)

Outcome

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Order for payment should be granted in the sum of £1,890.

Background

The Applicant submitted an application seeking an order for payment from the Respondent in the sum of £1,890. That sum related to arrears of rent arising from the tenancy agreement between the parties in respect of the property at Carcary Lodge, Farnell, Brechin, DD9 6UD. A case management discussion was adjourned on 19th July 2018 because the Respondent was unable to attend. A case management discussion took place on 20th September 2018. Reference is made to the note detailing the outcome of that case management discussion. A hearing was assigned for today and the Tribunal intimated the date, time and place of the hearing to both parties.

The Hearing

The Applicant was represented by Mr Charles Gow and the Respondent was personally present. The Tribunal had 2 issues to consider at the hearing, namely:-

1. Whether the rent arrears are lawfully due, having regard to the alleged disrepair at the property as set out in the Respondent's written representations.
2. Whether the property required work as recommended by Mr G Stewart in his letter to the Applicant dated 26th February 2013 to resolve alleged issue with rising damp throughout the property.

The Tribunal was addressed by both parties in relation to these issues:-

The Applicant

Mr Gow sought an order for payment in the sum of £1,890. The Applicant's position was that rent was lawfully due. Mr Gow however did not accept that the property was in disrepair, nor did he accept that work was required as recommended by Mr G Stewart.

The Tribunal heard evidence from the Applicant's witness, David Longmuir, who has been the Clerk of Works for the Estate since 1996. He gave evidence about defects reported to him and repairs that he carried out. He advised that he was responsible for the commissioning of all necessary repairs. His evidence was that the property was not in disrepair, but on occasions required repairs to be carried out. He advised that Mr G Stewart carried out some repairs to the property whilst he lived at the property and he described Mr Stewart as being very capable of carrying out repairs. Mr Longmuir had seen the letter from Mr Stewart dated 26th February 2013 but disagreed that the work suggested by Mr Stewart was required. He advised that after the property had been flooded, he inspected the ground floor joists and noted that there were no major defects in the timber at that time.

Mr Longmuir was responsible for upgrading the property after Mrs Stewart vacated it in October 2017. The work carried out involved stripping out floors and walls, and the installation of a new kitchen, insulation, heating system and double glazing. His evidence was that the property met the repairing standard before the upgrading work was carried out.

Mrs Stewart asked Mr Longmuir to explain why he had failed to carry out a repair. Mr Longmuir advised that he undertook a temporary repair on one occasion, but denied having failed to carry out repairs where necessary.

The Respondent

Mrs Stewart conceded that rent was lawfully due. However, her position was that the property was in disrepair and despite reports to the Applicant, necessary repairs were not carried out. Mrs Stewart took advice from the Citizens Advice Bureau in relation to the condition of the property, but she took no formal steps to redress the situation. She did not set aside rent in a separate account pending repairs being carried out.

The Respondent's sister, Joan Gibb gave evidence. She advised that she visited the property approximately every 2 months. She noted that the property was damp and had deteriorated over the course of the tenancy and advised that the Respondent's late husband carried out a lot of repairs himself. She was aware that Mr G Stewart had recommended some work, but was unable to give a great deal of detail about that.

Finding in Fact:

1. The agree rent arrears were lawfully due by the Respondent to the Applicant.

Reason for Decision

The Tribunal proceeded on the basis of the written documents which were before it, the submissions made by the parties and the evidence of the 2 witnesses. The Applicant's representative invited the Tribunal to make the Order sought for payment in the sum of £1,890. The Tribunal was satisfied that rent was lawfully due by the Respondent. That is a matter which the Respondent conceded. Although the Respondent may have had concerns about the condition of the property, and despite having taken advice, she did not avail herself of a legal remedy. The Respondent advised the Tribunal that she did not withhold rent in a separate account owing to the condition of the property. The Respondent was contractually bound to pay the Applicant all rent due for the period of tenancy. The Tribunal was satisfied that the sums sought by the Applicant are due and therefore the Order was granted.

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.



Legal Member/Chair

29th October 2018

Date