

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/18/3504

Re: Property at 54 Lamont Crescent, Cumnock, KA18 3DU (“the Property”)

Parties:

**Mr Ragulan Sriskanthan, C/O Chesnutt Skeoch Ltd, 30 East Main Street,
Darvel, KA17 0HP (“the Applicant”)**

**Mr Charles McIlvaney, Ms Lee Ann Hose, 3 Blackfaulds Road, Cumnock, KA18
3DY (“the Respondent”)**

Tribunal Members:

George Clark (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the application should be granted and made an
Order for Payment by the Respondent to the Applicant of the sum of £3,015.06.**

Background

By application, received by the Tribunal on 24 December 2018, the Applicant sought an Order for Payment of £3,015.06 against the Respondent. The sum sought comprised arrears of rent to 29 November 2018 and reimbursement of the cost of remedial and repair work to the Property at the end of the tenancy.

The application was accompanied by copies of a Short Assured Tenancy Agreement between the Parties, commencing on 30 November 2017 and running until 29 November 2018 and a Rent Statement, showing arrears of rent as at 29 November 2018 of £2,455.06 and repair costs of £560. There was no provision for the Respondent to terminate the tenancy at an earlier date.

The Respondent, in the course of earlier proceedings in this case accepted that the sum of £560 was a fair assessment of the repair work required to the Property, but stated that the Property had been vacated on 9 July 2018, the Applicant had been advised of that by text on that day or the following day and that, two days after moving out, the Respondent tried to gain access, but found that the Applicant had

changed the locks. The Respondent contended that this meant the Applicant had resumed possession of the Property and that no rent should be payable after that date.

The Hearing

A Hearing took place on 1 July 2019, but was adjourned, as the Respondents were not present and there was some doubt as to whether they had received notification of the Hearing.

The adjourned Hearing took place at Russell House, King Street, Ayr on the morning of 15 August 2019. The Applicant was represented by Ms Alice Seggie of Chestnutt Skeoch Limited, Darvel. The Respondent was not present or represented.

The Applicant's representative told the Tribunal that her instructions remained to seek arrears of rent down to the contractual termination date of 29 November 2018. She said that on 1 July 2018, she had contacted the Respondent to say a face-to-face meeting was required to discuss rent arrears. The Respondent had returned the call and promised two payments, but had not made good on that promise. Ms Seggie denied receipt of a text from the Respondent on or 9 or 10 July. The firm had received a telephone call from the downstairs neighbours on 27 July 2018, to the effect that the Respondent might have left the Property, as a pile of rubbish had been deposited outside. The Applicant's representative had attended the Property on 30 July and, noting that there were no curtains up and receiving no reply after knocking on the door, had entered the Property to find that it appeared to have been vacated. There was rubbish in the Property, but no mail. The Respondent's representative had then contacted the Respondent, seeking confirmation as to whether the Respondent had left the Property, with a reminder of the obligation to pay rent up to the termination date of 29 November 2018 and giving the Respondent the opportunity to clean up the Property to allow it to be remarketed. This might have produced a new tenant, in which case, the Applicant would have released the Respondent from the obligation to pay rent after a new tenant took occupation. Having received no response and not knowing the whereabouts of the Respondent, the Applicant's representative took the precaution of having the locks changed on 14 August 2019. The necessary repair works had been carried out and the Property had then been advertised through a letting agent and on well-known property websites, but it had taken until December to secure a new tenant.

Reasons for Decision

The Tribunal noted that it was accepted that the Applicant was entitled to an Order for Payment in respect of the repairs costs of £560 and the only issue was the date to which the Respondent should be held liable for rent. The Tribunal accepted the evidence led by the Applicant's representative in relation to the timeline of events. The Respondent had not produced evidence of a text message sent on 9 or 10 July 2018, but the existence or otherwise of such a text did not have a bearing on the Tribunal's decision. The view of the Tribunal was that the Respondent was contractually bound to pay the rent down to 29 November 2018, or to an earlier date if the Applicant secured a replacement tenant in the meantime. That had not happened, but the Tribunal was satisfied that the Applicant had taken adequate steps to market the Property for rent.

The Tribunal did not accept the Respondent's argument that changing the locks somehow relieved them of responsibility to pay rent as contractually provided for. The Applicant's representative had made contact with the Respondent upon visiting

the Property on 30 July 2018 and, having received no response and not knowing the whereabouts of the Respondent, the Applicant's representative was entitled to take the precaution of changing the lock. Had the Respondent wished to resume occupation, it would have been a simple matter to obtain from the Applicant's representative a new set of keys.

The Tribunal was satisfied on the evidence led that the Respondent remained bound to pay rent down to the contractual termination date of the tenancy on 29 November 2018. Accordingly, the Applicant was entitled to the Order for Payment sought in the application.

Decision

The Tribunal determined that the application should be granted and made an Order for Payment by the Respondent to the Applicant of the sum of £3,015.06.

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.

G Clark

Legal Member/Chair

15 August 2019

Date