

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 (Act)**

Chamber Ref: FTS/HPC/CV/18/2535

**Re: Property at 3 Wylies Brae, New Galloway, Castle Douglas, DG7 3RH ("the
Property")**

Parties:

**Mr Michael Ansell, Meadowbank, New Galloway, Castle Douglas, DG7 3RL
("the Applicant")**

**Ms Diane Mitchell, 35 Gordon Drive, Castle Douglas, DG7 1JG ("the
Respondent")**

Tribunal Members:

Alan Strain (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that the Respondent pay the sum of £2,236 in respect of
rent arrears to the Applicant.**

Background

**This is a Hearing in respect of an application for payment of rent arrears in respect of
a tenancy.**

**The case called for a CMD on 19 November 2018 at which the Parties were present
and the Respondent represented.**

**The Applicant produced an up to date schedule of loss on 11 December 2018
confirming that he was only seeking the claimed rent arrears under deduction of the
Deposit. He also produced a statement showing how the arrears had been
calculated.**

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The Respondent had been required to produce written submissions addressing the legal basis for her assertion that she was entitled to withhold rent. A letter setting out the alleged defects in the Property and its condition had been lodged. No reference was made to any legal authorities or legal basis for her defence.

The Tribunal had regard to the following documents:

1. Application dated 25 September 2018;
2. Tenancy Agreement dated 20 November 2012;
3. Emails between the Parties;
4. Written Submissions of the Parties;
5. Photographs of the Property from the Parties;
6. Updated statements of rental arrears from both Parties;
7. Letters lodged in support of the Respondent;
8. Invoices and Receipts in respect of the Applicant's case.

Hearing

The case called for a Hearing on 23 January 2019. Both Parties were present and the Respondent was again represented. At the outset of the Hearing the Respondent sought to lodge a version of the Applicant's statement of rent arrears which disputed the sums due, photographs taken recently showing the Property being worked upon subsequent to the termination of the tenancy and also various letters from people to speak to the condition of the Property and the Respondent's character. These had not been lodged in compliance with the Procedure Rules but the Tribunal had regard to them and allowed the Applicant to consider and respond to these.

The Applicant and the Respondent both gave evidence. The Respondent conceded that she had not notified the Applicant that she was withholding rent until such time as various works were carried out to the Property. She had withheld the rent and accumulated the majority of the arrears during 2015. She had recommenced paying rent and towards the end had been overpaying in respect of rent arrears. She stated that she had paid the sum of £600 into a deposit account in 2018 in respect of the withheld rent but did not produce any documentary evidence of this.

The Respondent also stated that she had paid the first 2 month's rent in cash to the Applicant. The Applicant could not recall if the Respondent had paid the first 2 month's rent in cash.

The Applicant denied that the Property was in the condition claimed by the Respondent and that he was ever notified of any intention to withhold rent.

The Respondent asserted that she had given notice by email of 7 May 2018 to terminate the tenancy but did not have a copy of this. The Applicant denied this and said the Respondent had failed to give any notice.

Findings in Fact

So far as material the Tribunal made the following findings in fact:

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1. The Parties entered in to a tenancy agreement dated 20 November 2012 from 24 November 2012 until 19 June 2018;
2. The Respondent paid the first 2 month's rent (£520) to the Applicant in cash;
3. At the termination of the tenancy the Respondent was in arrears of rent in the sum of £2,236.00;
4. The Respondent did not advise the Applicant of her intention to withhold rent;
5. The Respondent did not give notice of her intention to terminate the tenancy.

Reasons

The Tribunal did not accept that the Respondent had any basis as a matter of law to withhold any rent. The bulk of the rental arrears had occurred during 2015 and the Respondent had paid rent since then up until just prior to the termination of the tenancy.

By her own admission she had not informed the Applicant of any intention to withhold the rent. Her defence accordingly fails as a matter of law. In any event the Tribunal did not accept her evidence as credible or reliable on this point given that she had recommenced payments and continued to pay for the period up until just before termination. She had not placed money on deposit until 2018 and was unable to evidence this. In any event the amount she claimed on deposit was significantly less than the rent arrears. Even if she had notified the Applicant of her intention to withhold rent by her own actings she would have waived any entitlement to do so.

The Tribunal accepted the Respondent's evidence that she had paid 2 month's rent in cash. The Applicant he conceded that he could not recall if this was the case. The Tribunal accordingly accepted the Respondent's evidence on this point.

The Tribunal preferred and accepted the Applicant's evidence that he had not been given notice by the Respondent. The Tribunal did not accept the Respondent's evidence that she had emailed the Applicant on 7 May 2018 giving notice. The Respondent was unable to produce the email of 7 May 2018.

In all the circumstances the Tribunal determined that the sum of £2,236 was due to the Applicant in respect of rent arrears and granted the order accordingly.

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.

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Legal Member/Chair

Date

23 January 2019