



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)

Chamber Ref: FTS/HPC/CV/18/1714

Re: Property at 103 Corsebar Road, Paisley, PA2 9PY (“the Property”)

Parties:

Mrs Morag McGhee, 11 Juniper Avenue, Bridge of Weir, Renfrewshire, PA11 3NS (“the Applicant”)

Mr Paul McComish, Ms Pauline McLaughlin, formerly residing at 103 Corsebar Road, Paisley, PA2 9PY; 103 Crosebar Road, Paisley, Renfrewshire, PA2 9PY and now residing at 33B Stanely Road, Paisley, Pa2 6HG (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member)

Decision

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

BACKGROUND

1. By lease dated 5th July 2016 the Respondents agreed to rent the Property from the Applicant;
2. The rent due was £1,350 per calendar month;
3. A tenancy deposit in the sum of £2,600 had been paid by the Respondents. This had been lodged with, and remained with, an approved tenancy deposit scheme;
4. Rental payments were made up to and including 5th March 2018. Thereafter no further rental payments were made;
5. The Applicant presented an application to the Tribunal on 6th July 2018 seeking payment of rent arrears in the sum of £4,050.00. At that point in time 3 monthly rental payments were outstanding;
6. The Applicant separately presented an application to the Tribunal seeking an order for the removal of the Respondents from the Property;

7. Both cases called before the Tribunal, at a Case management Discussion, on 19th September 2018. On that day, in relation to the separate application, the Tribunal granted an order removing the Respondents from the Property. The Applicant requested, in relation to this application, that the Tribunal make an award for rent arrears accrued to that date and for further sums that may become due;
8. The Tribunal could not make such an order. In the circumstances, the Applicant requested that the Case Management Discussion be continued to a future date at which point the Respondents would be removed from the Property and the exact rent outstanding would be known. There was no opposition to that and a further Case Management Discussion was assigned for 16th November 2018;

THE CASE MANAGEMENT DISCUSSION

9. The Applicant did not attend the Case Management Discussion but was legally represented by Miss Morgan of Morgan Legal Solutions, Glasgow;
10. The respondent Paul McComish attended. The Respondent Pauline McLaughlin did not. Mr McComish advised he was representing her. The Tribunal had previously intimated the date, time and place of the Case Management Discussion to Miss McLaughlin. In the circumstances the Tribunal, in terms of Rule 29 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (the "FTT Rules"), being satisfied in terms of Rule 24 of the FTT Rules that Miss McLaughlin had been given reasonable notice of the Case Management Discussion elected to proceed in her absence;
11. It was confirmed that the Respondents had vacated the Property. The Applicant believed they had removed themselves from the Property "on or about" 22nd October 2018. Mr McComish advised that they had removed themselves from the Property on 20th October 2018. Miss Morgan, on behalf of the Applicant, accepted that as the date of termination of the tenancy;
12. It was agreed that the daily rental amount was £44.38;
13. Miss Morgan thereafter sought to amend the sum claimed by way of rent arrears to £8,810.08 to take account of the full period from 5th April 2018 (the date on which the payment of rent was first missed) until 20th October 2018 (the date of termination of the tenancy). Mr McComish did not oppose the amendment and, in terms of Rule 13 of the FTT Rules, the Tribunal allowed it;
14. Mr McComish asked that the amount of any order by the Tribunal be reduced by £2,600.00, being the amount held by an approved tenancy deposit scheme, on the basis he anticipated those funds would be released to the Applicant. The Tribunal advised that it would not do so as the fate of any funds held by a tenancy deposit scheme was outwith the control of the Tribunal. If the funds were released to the Applicant as a result of rent arrears then that would no doubt be received and accepted in part satisfaction of any order for payment. The Tribunal, however, could not speculate as to what will happen with the deposit funds;
15. Mr McComish raised the issue of agreeing a repayment schedule. The Tribunal advised that it did not have power to order payment of any award in instalments. It would be a matter for he and Miss McLaughlin to enter into discussions with the Applicant in relation to such a matter;

FINDINGS IN FACT

16. The Tribunal made the following findings in fact:-

- i. By lease dated 5th July 2016 the Respondents agreed to rent the Property from the Applicant;
- ii. The rent due was £1,350 per calendar month;
- iii. Rental payments were made up to and including 5th March 2018. Thereafter no further rental payments were made;
- iv. The tenancy was terminated on 20th October 2018. As at that date rental payments were unpaid for a period of 6 months and 16 days;
- v. The amount outstanding by the Respondents to the Applicant was £8,810.08;

DECISION

The Tribunal made an order that the Respondents are to make payment to the Applicant in the sum of Eight Thousand Eight Hundred and Ten Pounds and Eight Pence Streling.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

Virgil Crawford

16 November 2018

Legal Member/Chair

Date

