

Housing and Property Chamber First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) following an Application by the Respondents to review a Decision under rule 39 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

Chamber Reference: FTS/HPC/CV/18/0498

Re: Property at 138 Merkland Lane, Aberdeen, AB24 5RQ (“the Property”)

Parties:-

Tayhar Properties, Shanter Hillside, Aberdeen, AB13 4RB (“the Application”)

Miss Azmath Abbas, 138 Merkland Lane, Aberdeen, AB24 5RQ (2the Respondent”)

Tribunal Members:

Andrew Cowan (Legal Member)

Melanie Booth (Ordinary Member)

Decision

- 1. The Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) is to grant the Application for Review of the Tribunal’s Decision dated 18 June 2018. The Tribunal determined to allow the Application to proceed to a further Case Management Discussion in relation to the Application.**
- 2. The Tribunal determined that the Applicant should be granted a payment order against the Respondent in the sum of £3563.66.**

Background

- 1. This Application is in relation to civil proceedings arising from a short assured tenancy between the parties.**

In terms of an Application to the Tribunal dated 26 February 2018, the Applicant seeks an order from the Tribunal in respect of, inter alia,

- a) Outstanding rent due by the Respondent**

Andrew Cowan, Legal Member

- b) An order for "damages" to be paid by the Respondent, in respect of alleged damage to the Property caused by the Respondent.
2. A Case Management Discussion was held in relation to the Application on 18 June 2018. The Applicants were represented at that Case Management Hearing Discussion by Mr George Taylor and Mrs Sheena Taylor. The Respondent did not attend the Case Management Discussion. At that Case Management Discussion the Tribunal noted that the Applicants wished to withdraw their Application.
 3. Following the Case Management Discussion on 18 June 2018 the Applicants lodged an Application dated, 8 July 2018, in which they sought a Review of the Tribunal's Decision of 18 June 2018. The Application for Review was lodged in terms of rule 39 of the Regulations.
 4. A copy of the Application for Review was intimated upon the Respondent. Intimation of the Application was made by email to the Respondent dated 31 October 2018. The email address upon which intimation was made had previously been provided by the Respondent and had been confirmed by the Respondent to Sheriff Officers at the time earlier papers were served upon the Respondent. The Tribunal noted that the Applicant was also able to produce to the Tribunal a copy of an email dated 8 October 2018 from the Respondent, in which the Respondent acknowledged receipt of emailed correspondence from the Tribunal. In the circumstances the Tribunal were satisfied that the Respondent had received notification of the Application for Review as lodged by the Applicant.
 5. By letter dated 8 November 2018, and intimated to both parties by email, parties were advised that the Tribunal would hold a hearing in relation to the Application for Review on 14 December 2018 at the Credo Centre, 14/20 John Street, Aberdeen, AB25 1BT.
 6. Following intimation of the date of the Review Hearing the Applicants lodged written representatives and an inventory of documents in support of their Application for consideration at the Review Hearing. A copy of the Applicants written representations and the documents which they had lodged in support of that Application, were intimated by email to the Respondent by email dated 8 November 2018.

Application for Review of the Tribunal's Decision Dated 18 June 2018

1. The Tribunal considered the Application for Review at a hearing held on 14 December 2018. The Applicant was represented at that hearing by Mr Stephen Glennie of Messrs Gavin Bain & Company, Solicitors. The hearing was also attended by Mr George Taylor. The Respondent did not appear and was not represented at the hearing on 14 December 2018.

Andrew Cowan, Legal Member

2. The Tribunal noted that the original Application raised in relation to this matter was raised by Tayhar Properties. The Tribunal further noted that the Property in question, being the subjects at 138 Merkland Lane, Aberdeen, was held in the joint names of Sheena Taylor and Jane Harold. At the original Case Management Discussion on 18 June 2018 the Tribunal had not been satisfied there was clear evidence that Tayhar Properties were instructed to act on behalf of the heritable proprietors of the Property in relation to the Application and that they accordingly had title to sue. At the Review Hearing it was submitted on behalf of the Applicants that Tayhar Properties are a partnership. The partnership operates from an address at Shanter, Hillside, Portlethen, Aberdeen. Mr George Taylor works full time in the business. Tayhar Properties manages a number of leased properties on behalf of members of the Taylor family including the Property at 138 Merkland Lane, Aberdeen.
3. On the evidence supplied by the Applicant at the Review Hearing the Tribunal were satisfied that Tayhar Properties had instructions from the heritable proprietors of the Property at Merkland Lane, Aberdeen to grant the lease of the Property to the Respondent which was granted on 25 September 2017 with the Respondent and had further granted authority to Tayhar Properties to pursue the current Application for payment.
4. In reaching their Decision the Tribunal noted that the Respondent had emailed the Applicant on 8 October 2018. At that time the Respondent indicated she wished to make arrangements to settle the account due to the Applicants. She further indicated she wished to make proposals for payment of a arrears to the Applicants.
5. Having regard to all the circumstances of the case, and in particular the interest of justice, the Tribunal determined that it was appropriate to Review the Decision of the Tribunal dated 18 June 2018 and to allow the Application to proceed further.

Findings in Fact

The Tribunal found the following facts to be established

1. The Property at 138 Merkland Lane, Aberdeen, AB24 5RQ is held in the joint names of Sheena Taylor and Jane Harold.
2. Sheena Taylor and Jane Harold have authorised Messrs Tayhar Properties, Shanter, Hillside, Portlethen, Aberdeen, AB12 4RB to act as their agents in the lease of the Property.
3. The Property was let by Tayhar Properties to the Respondent by a lease dated 25 September 2017.

Andrew Cowan, Legal Member

4. The lease commenced on 25 September 2017.
5. The rent payable by the Respondent in terms of the lease was £550 per month.
6. No deposit was paid by the Respondent.
7. The Respondent terminated the lease on 30 June 2018.
8. The Respondent accrued arrears of rent due to the Applicant during the period of her tenancy. The total amount of rent arrears due by the Respondent amounts to £3179.66.
9. In the course of the tenancy, (for reasons unknown), the Respondent removed the fire door of the lounge at the Property.
10. The Applicants incurred cost in replacing the fire door following the termination of the tenancy by the Respondent.
11. The cost of replacing the fire door to the lounge was £384.
12. The total sum due by the Respondent to the Application (being the total of rent arrears and the cost of replacing a missing fire door) amounts to £3563.66.

Reasons for Decision

1. The Tribunal was satisfied that it was appropriate to grant the payment order for the amended sum of £3563.66.
2. At the time the Application had been raised the rent arrears due by the Respondent stood at £1738.85. The Respondent had terminated the tenancy as at 30 June 2018. As at that date the total rent arrears stood at £3179.66. The Applicants intimated their intention to seek the amended sum of rent arrears due by the Respondent and to amend their Application in this respect. The Applicants intention to seek this amended sum of £3179.66 was intimated to the Respondent in advance of this hearing.
3. The Applicants sought the additional sum of £384 in respect of the cost of replacing a fire door which was missing from the Property at the time the Respondent vacated the Property. The Tribunal were satisfied on the evidence of Mr Taylor that the fire door was present at the start of the lease and the Respondent was responsible for the cost of replacement of this door. The Tribunal noted the terms of an invoice produced by the Applicant to confirm the cost of replacement of the fire door in the sum of £384.

Andrew Cowan, Legal Member

4. By email dated 8 October 2018 from the Respondent to the Applicant the Respondent accepts that she is due "payment of arrears" to the Applicant.
5. In all the circumstances the Tribunal are wholly satisfied that the Applicant is due the balance of arrears of rent in the sum of £3179.66 together with the cost of the replacement fire door at the Property in the sum of £384. The Tribunal are accordingly satisfied that the Respondent is due to the Applicant the total sum of £3563.66. The Tribunal are satisfied that the Respondent was aware of the Application as amended and had not made any substantive response to the Application.

Decision

1. The Tribunal determined to grant a payment order in favour of the Applicant against the Respondent in the sum of £3563.66.

Right of Appeal

1. In terms of Section 46 of the Tribunals (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. The party must seek permission to appeal within 30 days of the date the decision was sent to them.

Andrew Cowan, Legal Member

Andrew Cowan

14/12/18
.....
Date