



**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/18/1359

Re: Property at 45 Ardbeg Avenue, Kilmarnock, KA3 2AW (“the Property”)

Parties:

Mr Morton Hannah, 21 Thomson Street, Kilmarnock, KA3 1EQ (“the Applicant”)

**Miss Rosemary Murphy, 16 Highfield Avenue, Kilmarnock, KA3 1SN (“the
Respondent”)**

Tribunal Members:

**Joel Conn (Legal Member)
Elizabeth Dickson (Ordinary Member)**

Decision

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

Background

1. This is an application by the Applicant for civil proceedings in relation to an assured tenancy in terms of rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”), namely an order for payment of rent arrears. The tenancy in question was a Short Assured Tenancy of the Property by the Applicant to the Respondent dated 28 March 2013.
2. The application was dated 21 May 2018 and lodged with the Tribunal shortly thereafter. The application was accompanied with a rent statement showing purported arrears as at 8 February 2018 of £2,898.27, being a purported shortfall of rent over a long period of time. The application further sought a payment of “one months Notice due” (*sic*) of £320.32.

3. The application called for a Case Management Discussion on 25 October 2018 when this hearing was assigned and a Direction was issued for further papers to be lodged in advance of the hearing. Both parties provided such papers to the Tribunal by the deadline of 16 November 2018. The Applicant provided a fresh statement of arrears, from a system called "Property Hawk". The Respondent provided a report by an accountant, Gerald Leitch, along with an attempted reconciliation by Mr Leitch and significant supporting vouching, such as bank statements, receipts said to have been provided by the Applicant, cash machine transaction receipts, and Housing Benefit receipts.
4. Late on 28 November 2018, Mr Leitch provided a further short report commenting on the Applicant's "Property Hawk" statement.

The Hearing

5. On 30 November 2018, at a hearing of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting at the Glasgow Tribunals Centre, we were addressed by the parties. The Applicant was accompanied by his book-keeper, Sharon Stephenson, who provided evidence in part. The Respondent was supported by her sister Elizabeth Scott.
6. The Applicant confirmed he had no objection to the late lodging of Mr Leitch's further report of 28 November 2018. During the course of the hearing, it became clear that the Applicant had intended to have lodged by the deadline of 16 November 2018 a copy email from himself to East Ayrshire Council's Housing Benefits team (dated 21 February 2017) but no trace of this was in the process. A copy was then lodged during the course of the Hearing by an email to the Tribunal. It was circulated to us, and shown to the Respondent during the hearing for her comments. Further at the hearing, the Applicant's book-keeper provided evidence with the assistance of print-outs from the Applicant's Sage system but the print-outs were not lodged. The evidence she provided, however, was simply to correct certain payment dates (shown on the "Property Hawk" statement as dates when the payment had been allocated against rent, as opposed to the actual rent amount and date of receipt). This meant the Applicant was able to agree with some of the Respondent's evidence on the actual payment dates of some rent payments and we did not insist on the print-outs being lodged.
7. At the conclusion of the hearing, the parties were asked to confirm their addresses. The Respondent's address was given as 16 Highfield Avenue, Kilmarnock, KA3 1SN. This was the address she gave in her representations of 16 November 2018 and she confirmed that this was her current address. This was also the address at which service of papers regarding the hearing had been served on 10 November 2018 and the records regarding the application were updated accordingly.

Findings in Fact

8. On 28 March 2013, the Applicant let the Property to the Respondent by lease with a start date of 28 March 2013 and an end date of 27 September 2013, thereafter continuing on a month to month basis until terminated "on giving no less than 1 months notice to the other party" ("the Tenancy").
9. Under the Tenancy, the Respondent was to make payment of £323.08 per four week period in rent to the Applicant in arrears, commencing "exactly four weeks after move in date".
10. No deposit was payable under the lease.
11. In or around early 2015, the local authority for the area, East Ayrshire Council, amended the level of Housing Benefit payable for the Property to £320.32 per four week period. The parties agreed at this time that the rent would be treated as amended to this lower figure going forward.
12. In or around 2016, the said Council ceased to pay the Applicant direct in regard of the Respondent's Housing Benefit. Payments of Housing Benefit were thereafter made by the Council to the Respondent by cheque. The Applicant commenced collecting rent direct from the Respondent in cash in or around July 2016.
13. The Respondent routinely paid sums in cash of £300 or £320 to the Applicant instead of the full four-weekly rental but the Applicant was satisfied to allow such a low amount of arrears to exist.
14. The Applicant's collection of rent payments was not regular and no rent book was used. From 14 July 2016 at least, the Applicant normally wrote receipts to the Respondent on scrap paper to receipt payments received from her, with a number being written on the foot of an old letter from him to the Respondent.
15. As of the close of banking on 21 November 2016, there were arrears of £22.75 due under the Tenancy.
16. The Respondent thereafter made payments of £3,250 as follows:
 - a) On 21/12/2016 £300.00
 - b) On 11/03/2017 £300.00
 - c) On 26/04/2017 £250.00
 - d) On 24/05/2017 £300.00
 - e) On 20/06/2017 £300.00
 - f) On 15/07/2017 £300.00
 - g) On 12/08/2017 £300.00
 - h) On 05/10/2017 £600.00
 - i) On 27/10/2017 £300.00
 - j) On 09/11/2017 £300.00

17. The Respondent left the Property on or around 18 January 2018 when she obtained an alternative tenancy. The Respondent did not inform the Applicant that she had left. The Applicant first became aware of the Property being unoccupied on or about 8 February 2018.
18. Between 22 November 2016 and 8 February 2018, rent due under the Tenancy was £5,285.28 made up as follows:
- | | |
|------------------|--|
| a) On 01/12/2016 | £320.32 |
| b) On 29/12/2016 | £320.32 |
| c) On 26/01/2017 | £320.32 |
| d) On 23/02/2017 | £320.32 |
| e) On 23/03/2017 | £320.32 |
| f) On 20/04/2017 | £320.32 |
| g) On 18/05/2017 | £320.32 |
| h) On 15/06/2017 | £320.32 |
| i) On 13/07/2017 | £320.32 |
| j) On 10/08/2017 | £320.32 |
| k) On 07/09/2017 | £320.32 |
| l) On 05/10/2017 | £320.32 |
| m) On 02/11/2017 | £320.32 |
| n) On 30/11/2017 | £320.32 |
| o) On 28/12/2017 | £320.32 |
| p) On 25/01/2018 | £320.32 |
| q) On 08/02/2018 | £160.16 in respect of the 14 days from the last rental payment date until 8 February 2018. |
19. The arrears of rent to 8 February 2018 were £2,058.03.
20. The lease provides no contractual rate for interest.
21. The Applicant is entitled to one month's rent as damages in lieu of the failure to provide notice under the lease. Such damages are reasonably assessed as £320.16 being a sum equivalent to four week's rent at the agreed lower rent.

Reasons for Decision

22. The application was in terms of rule 70, being an order for civil proceedings in relation to assured tenancies.
23. The parties were generally in agreement as to the arithmetic and sums due and paid. Indeed, there was no disagreement in regard to the figures up to 21 November 2016. We used that date as a start date for enquiry into what separated the parties. (The Respondent had lodged vouching for much of the period before 21 November 2016 and there appeared to be a £40 discrepancy between that vouching and the Applicant's "Property

Hawk” spreadsheet, but this was to the Respondent’s benefit and was not pursued by the Applicant.)

24. Once the Council stopped paying Housing Benefit direct to the Applicant, the handling of rent collection became chaotic. The Applicant conceded that he did not arrange a regular time to collect rent, nor did he supply a rent book. The Respondent, in turn, normally sought receipts but these were scrappy notes, with the first seven (dated 14 July to 21 December 2016) written on the foot of a letter from the Applicant to the Respondent dated 7 June 2016 (which coincidentally dealt with the change in Housing Benefit payments). The remainder appeared to be written across three small pieces of paper. Only copies of the receipts were provided to the Tribunal, not the originals. Parties were agreed that receipts were not always supplied contemporaneously and it was clear that they were not provided with every payment (with at least one payments accepted as paid not being receipted). The Applicant said that he always took a contemporaneous note on his phone when a payment was collected and receipts were sometimes issued retrospectively. The Respondent accepted that she did always insist on a receipt.
25. Further, the payments collected varied from £250 to £600 in the period from 22 November 2016 onwards, though the majority were £300. The Applicant explained that if he visited the Respondent at the Property and she had cash, he would take £320. If she did not, they would go together to a nearby cash machine where she would withdraw £300, which was her maximum allowed withdrawal. The Respondent’s recollection differed and she said that she thought payments made by her at her house (from money she was holding) might be only £300, not £320, though she was far from definitive in her recollection.
26. The report and vouching provided by Mr Leitch, the accountant who had assisted the Respondent included 13 handwritten receipts. (Of these, Receipts 1 to 5 were for before 21 November 2016 and did not require consideration in detail.) Receipt 6 was for a payment of £300 by the Respondent on 21 November 2016 which the Applicant accepted as having been made. This payment brought the balance of the arrears to £22.75 and was the last point where the parties were entirely in agreement.
27. Mr Leitch’s report was critical of the Applicant’s accounting, casting doubt on whether a formal accounting system was used. The Applicant, and Ms Stephenson, explained that the Applicant had both a letting management programme (“Property Hawk”) as well as a Sage accounting system. It was accepted that the dates of her “posting” the receipted payments in Sage may be several days after payments were received but the receipts would be accurately recorded in Sage. In Property Hawk, however, the payments may be shown at a date when they were “allocated” against an outstanding rental due. The dates in Property Hawk were not entirely accurate, though the Applicant insisted the final balances were accurate.

Ms Stephenson's evidence, from her consideration of the Sage print-outs, was that there were no payments shown in Sage that were not seen in Property Hawk (at some allocated date) and vice versa.

28. Ultimately, the disputes on the rental payments were restricted to the Respondent claiming that she had made five payments of £300 that had not been credited by the Applicant. These were:
- a) Three payments in late December 2016, January 2016 and late March 2016 of which she held no receipt and no evidence of a corresponding withdrawal from her bank. She stated that she must have made these at her home, in cash that she held at the time, and not received a receipt.
 - b) Two payments of 27 October 2017 and 9 November 2017 for which receipts were produced (and referred to as Receipts 12 and 13 respectively in Mr Leitch's report).

With these additional alleged payments, the Respondent was willing to concede an arrears figure of £1,158.03.

29. Of these five alleged payments, the Applicant disputed them all but was willing to concede for the purposes of the hearing that Receipt 12 of 27 October 2017 appeared to be in his handwriting, with his signature, and that there was evidence provided with Mr Leitch's report that the Respondent had withdrawn £300 from a cash machine at that date. He held the full arrears were £2,658.03 but with a concession on the alleged payment of 27 October 2017 he was now seeking only £2,358.03. The Applicant did not appear to go as far as accepting that he had received the payment of £300 on 27 October 2017 however.
30. We generally found both parties credible and reliable. For the reasons explained below, we found the Applicant lacking in credibility and reliability in regard to Receipts 12 and 13 and we found the Respondent lacking in reliability in regard to the additional payments she claimed to have made in December 2016 to March 2017. We found Ms Stephenson both credible and reliable.
31. In regard to the rent payments in dispute, on the period from December 2016 to March 2018, the Respondent said that she had made payments, but never received a receipt nor insisted on one late, and that these payments must have been made from cash she held at the time (hence the lack of evidence of cash machine withdrawals). The Applicant was clear that he never received such additional payments. He submitted that payments taken in cash at the Property were always £320. (To that the Respondent first appeared to insist otherwise and then conceded that sometimes she did pay £320 when she held cash.) Further, the Applicant relied on his email of 21 February 2017 to East Ayrshire Council's Housing Benefit team where he sought direct payment of Housing Benefit on the grounds that the Respondent was then over 8 weeks in arrears. (The Applicant said that he was never given direct payment of the Housing

Benefit for reasons that were unknown to him.) The email attached a spreadsheet showing arrears of £983.71 as at 26 January 2017. On being shown this email and the attached spreadsheet showing the arrears, the Respondent initially continued to hold that she was not in arrears as at 21 February 2017, but thereafter conceded that perhaps she may have been in arrears but would have made up the payments late. She could provide no evidence of such payments however. Further, there was the evidence of the receipts lodged by the Respondent. Though there was a payment of £300 on 11 March 2017 that was not receipted (but which had always been accepted by the Applicant as having been made), in general Receipts 1 to 11 covered all payments that the Applicant showed as credited from 14 July 2016 to 5 October 2017. There were no receipts that corresponded with, or could be construed as corresponding with, the three allegedly uncredited payments that the Respondent claimed were made in December 2016, January 2017 and March 2017. This was consistent (at least as at February 2017) with the correspondence by the Applicant to the Council. We were thus satisfied, on the balance of probabilities, that no additional payments had been made by the Respondent during the period from December 2016 to March 2017 and the Applicant's statement was correct in regard to this period.

32. In regard to the payments purporting to be vouched by Receipts 12 and 13 (those of £300 each on 27 October and 9 November 2017), the Respondent was clear that these were receipts for rent payments that she had received from the Applicant in a similar fashion to all the others. As stated, the Applicant was willing to concede a credit in regard to Receipt 12 though never appeared to go as far as admitting that he must have received the payment. It was unclear what position he was seeking to adopt as to the origin of Receipt 12 therefore. The Applicant was not willing to concede Receipt 13 as he said it was unsigned, there was no record of receipt of payment on his systems, and the Respondent lacked any evidence that she had made a cash machine withdrawal around that date. The Applicant nonetheless did accept that Receipt 13 misspelled "Received" as "Recieved", a mistake common to other receipts that he accepted as accurate and a mistake he accepted he knew he made in his spelling. To our eyes, the handwriting of Receipt 13 was also very similar to that in the other receipts that the Applicant accepted as accurate. We were satisfied, on the balance of probabilities, that Receipts 12 and 13 were both accurate records of additional payments that the Respondent had made on the dates shown in the receipts.
33. In regard to the arithmetic of the final period, and the lack of notice, the Respondent conceded that she gave no notice and did not dispute the terms of the lease that required one month's notice to be given by the tenant to the landlord. The Applicant sought only £320.32 in respect of damages in lieu of the lack of notice, being equivalent to four week's rent under the long-standing agreement on a reduced rent. The Respondent conceded this figure. In regard to the rent due to conclusion of the lease, rent under the lease was payable in arrears, and parties were agreed that rent was due to be pro-rated to the end of the lease. Although the

Respondent insisted that she left the Property completely on 18 January 2018, the same day that she obtained keys for her new property, the Applicant stated that he had visited the Property regularly during these final weeks to pursue the unpaid rent and he did not see it void of all furniture until 8 February 2018, which was also the date he made contact with the Respondent's mother who confirmed the Respondent had moved to a new address. The Respondent was willing to concede an additional 14 days rent to 8 February 2018 and both parties agreed this pro-rated to £160.16. (Originally the Applicant had sought only £80.08 for the period until 8 February 2018, being equivalent to 7 days additional rent. Ms Stephenson stated that she believes she had miscalculated the figure counting from 1 February 2018, being the usual Housing Benefit payment date, rather than from the last rental due date of 25 January 2018.)

34. Taken together, this provided arrears in rent of £2,058.03, being the £22.75 of arrears outstanding to 21 November 2016 (the last period where parties were entirely in agreement on the figures) and a further shortfall of £2,035.28 from 22 November 2016 to 8 February 2018. In addition, the damages in lieu of notice were agreed at £320.32.
35. On consideration of the submissions and evidence we were was satisfied to make a decision at the hearing to award the sum of £2,378.35 against the Respondent being the sum of arrears we determined were due plus the agreed damages figure in lien of notice.
36. We were informed during the course of the hearing that the Applicant had been made bankrupt during the period in question and remained an undischarged bankrupt. During a recess at the hearing, we consulted with Wylie & Bisset, the agent for his Trustee, the Accountant in Bankruptcy. Laura Reid, the team leader of Wylie & Bisset's Asset Realisation Team, confirmed the Trustee did not seek to enter the application but wished to be informed of the outcome. In the circumstances, we direct that a copy of this Decision and the Order following be sent by the Tribunal to Wylie & Bisset.

Decision

37. In all the circumstances, we were satisfied to make the decision to grant an order against the Respondent for payment of the sum of £2,378.35 to the Applicant.
38. We further direct a copy of this Decision and the Order following thereon to be intimated by the Tribunal upon Wylie & Bisset, 168 Bath St, Glasgow G2 4TP within 7 days of the date of this Decision.

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.

J Conn

Legal Member/Chair

Date

30 November 2018