

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 71 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/18/2496

Re: Property at 19 Innerwood Road, Kilwinning, KA13 7DU (“the Property”)

Parties:

Mr Brian Speirs, 107 Hunter Drive, Irvine, KA12 9BS (“the Applicant”)

Mrs Annelize Dawkins, 17 Innerwood Road, Kilwinning, KA13 7DU (“the Respondent”)

Tribunal Members:

David Preston (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined that the respondent will pay to the applicant the sum of THREE THOUSAND NINE HUNDRED AND SEVENTY POUNDS (£3970)

Background:

1. By application dated 13 September 2018 the applicant sought an order for payment in respect of:
 - a. Arrears of rent in the sum of £4406.04;
 - b. Costs for removal of goods in the sum of £156.04; and
 - c. Lawyer’s fees in the sum of £375.
 - d. An assertion by the respondent that in terms of a copy text message from the applicant to the respondent, the applicant had written off some arrears and had thereby waived his right to recover same.

2. By Notice of Acceptance of Application dated 5 November 2018 a legal member of the First-tier Tribunal for Scotland, Housing and Property Chamber with delegated powers so to do referred the application to a tribunal for determination. A copy of the application and documentation was served on the respondent by Sheriff Officers on 22 November 2018 giving notice that a Case Management Discussion (CMD) would take place at the Glasgow Tribunals Centre on 14 December 2018.

3. Following the CMD a Note of the Discussion was sent to the parties along with a Direction issued by the tribunal. The Note of Discussion identified the disputed issues which were agreed between the parties and adjourned the case to a full hearing.
4. The Direction dated 14 December 2018 required the parties to lodge statements detailing all rent due throughout the tenancy and detailing all payments paid by the respondent.
5. The statements were duly lodged with the tribunal although due to administrative oversight, they were neither sent to the tribunal members nor crossed over between the parties.

Hearing:

6. A hearing took place on 31 January 2019 in the Glasgow Tribunals Centre. Both parties were present at the hearing with the respondent having a supporter present who took no part in the proceedings. It was established that the required statements had been lodged by the parties and after a short adjournment to allow the parties and the tribunal to study the statements the parties were asked for representations.
7. The applicant confirmed that the respondent had vacated the property on 31 May 2018 and was looking for the arrears of rent which had accumulated over the period of the lease, which had commenced on 23 November 2009. He calculated the arrears to amount to £4770 as detailed in the statement lodged by him. He had covered the period from January 2010 until May 2018 in the statement and had calculated the shortfall in payments for each of the year individually.
8. The respondent had lodged copy bank statements which contained only the payments made to the applicant, covering the period January 2012 to 18 February 2018. She accepted that she had not produced a statement for earlier years and that the tribunal would therefore accept the applicant's statement in that regard.
9. In any event the tribunal determined that the correct method of calculating the arrears was to calculate the total rent due for the period in question (8 years and 5 months) at £400 per month. There had been no rent increases imposed over the period. The total paid by the respondent as shown on the statements produced amounted to £29430, leaving a shortfall of £10970. In addition to these payments it was a matter of agreement between the parties that the respondent had paid a further total of £6600 during 2018. This left a final shortfall of £4370 outstanding to cover the period of the lease.
10. The parties acknowledged and accepted this calculation. The respondent said that she had only taken four months during 2018 as being due but accepted that the rent was due for the month of May as well.

11. The tribunal turned to the other issue identified as being in dispute, namely; the applicant's legal fees; the cost of removing goods; and the writing off of some arrears.
12. After some lengthy discussion, the applicant indicated that he would not insist on these sums and would withdraw them from consideration.
13. The tribunal considered the terms of the text message dated 17 May 2018 referred to by the respondent. The text in question reads: *Ho Andy I'm not trying to be funny but would you like to see my bank statements from the previous years don't think you would be to (sic) happy you are more than welcome to see all the rent arrears I personally had wrote them off so you more then welcome to see them.*
14. The tribunal did not consider that the applicant had bound himself to disregard any of the arrears. He said that he *had* written them off, but it was clear that he had changed his mind, which the tribunal was satisfied he was entitled to do. He had not given any undertaking to do so.
15. Accordingly, the tribunal determined that an order for payment of arrears of rent in the sum agreed by both parties of £3970 would be made. The claims for additional expenses and outlays, having been withdrawn, were not considered further by the tribunal.

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.

Mr David Preston

Legal Member/Chair

Date 30 January 2019