

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 14 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/18/2582

Re: Property at 16 Guthrie Court, Auchterarder, Perthshire, PH3 1SD (“the Property”)

Parties:

Mr Douglas Rutherford, 6 Transy Place, Dunfermline, Fife, KY12 7QN (“the Applicant”)

Miss Aoife De Castro, C/O Mark Mills, 26 Guthrie Court, Glen Eagles Village Auchterarder, Perthshire, PH3 1SD (“the Respondent”)

Tribunal Members:

Ewan Miller (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant would be granted a payment order against the Respondent in the sum of £387.10

Background

The Applicant was the owner of the Property. The Applicant had let the Property to the Respondent and two other individuals on 20 October 2017. The 3 tenants had left the Property at various points in 2018. The Applicant had alleged that rent arrears of a little over £1000 were outstanding and had applied to the Tribunal seeking an order for payment against the Respondent.

The Tribunal had before it:-

- The Applicant’s application to the Tribunal
- Written submissions from the Applicant
- Written submissions and photographs of the Property from the Respondent

The Hearing

The Tribunal held a hearing at Inveralmond Business Centre, Auld Bond Road, Perth on 7 May 2019 at 2pm. Present were the Applicant, accompanied by Mrs Linda Young and his letting agent Mr Stuart Dalziel of Abbey Forth Property Management Limited. The Respondent was not present as she now resided abroad but was represented by Ms Patricia MacGillivray of 18 Guthrie Court, Auchterarder, PH13 1NA

Findings in Fact

The Tribunal found the following facts to be established:-

- The Applicant was the owner of the Property;
- The Applicant had let the Property to the Respondent and two other tenants in October 2017;
- The Applicant had ceased to reside in the Property on 16th October 2018;
- The monthly rental of the Property was £750;
- As a result of inadvertent water penetration from an upper floor flat, the Property required repairs to be carried out;
- The repairs were completed in August 2018;
- The Property ceased to be available as an HMO property on 7 September 2019;
- The outstanding rent arrears, as agreed between the parties, were £387.10;

Reasons for the Decision

The Tribunal based its decision on the written submissions before it and the evidence obtained in the course of the hearing. The Tribunal were grateful for the preparation and assistance provided to them by the Applicant and the Respondent's representative for the work they had done in preparation for the hearing and for the manner in which they conducted themselves.

As stated above, the Applicant's application had sought payment of the sum of c£1000. This arose, allegedly, due to arrears that occurred across August to 16 October 2018. An issue had arisen as the Property required repair works and the standard of the Property had fallen as a result of the inadvertent water penetration from the upper floor flat. Matters had been further complicated by the fact that the HMO licence for the Property had lapsed on 7 September 2018 meaning it could only be occupied by two, rather than three persons. The Respondent did not view the full sum as being due.

The Tribunal would have reached a decision taking in to account these points and applying several different legal tests, had it required to do so. It was accepted by the Respondent that some rental arrears were due. The Tribunal enquired of both parties whether, given it was accepted that some rent arrears were due, it was possible for the parties to agree the amount. The Respondent's representative referred to an email of 29 April from the Respondent where she indicated that she would be prepared to pay £250 for September 2018 and £137.10 for the period to 16 October 2019. The Applicant indicated that if the Respondent was prepared to

apologise for the matter then he would be prepared to accept a payment of £387.10 in settlement of the arrears.

The Tribunal allowed the parties a brief adjournment. The Respondent's representative indicated that she had spoken to the Respondent and she confirmed that she apologised to the Applicant. She confirmed via her representative that she had transferred the sum of £137.10 to the Applicant's letting agent. The Applicant still held £250 on a deposit scheme for the Respondent and both parties agreed that the £250 would be taken to satisfy the balance of the agreed rent arrears.

On the basis that the parties had reached an agreement between themselves, the Tribunal saw no reason for it to make any more formal determination beyond the agreed rent arrears. The Tribunal took the parties agreement as being appropriate to amend the sum sought to £387.10 and to issue a payment order to that amount.

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.

E.Miller

Legal Member/Chair

Date

7/5/19