



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/18/3382

Re: Property at 11 Burnside, Scotsraig, Tayport, DD6 9PA (“the Property”)

Parties:

R & R Lamont, Scotsraig, Tayport, Fife, DD6 9PA (“the Applicant”)

Miss Charlene Morris, 20 Cowgate, Tayport, DD6 9DT (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicants were entitled to an order for payment of £3,128.45 against the Respondent for rent arrears accrued.

Background:

The application was made on 7 December 2018. The application asked for a payment order to be made for the sum of £3,127.61 for unpaid rent. In the paper apart the sum was stated as £3,128.45. Attached to the application were the Tenancy Agreement, AT5 and rent statement of up to and including November 2018 for the property showing arrears as at that date of £3,128.45.

A Case Management Discussion (CMD) was scheduled for 31 January 2019 and both parties advised of the date, time and venue. The Respondent was advised that that the Tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application.

Representations were received from the Respondent on 28 January 2019.

The Case Management Discussion

Ms Waughman from Thorntons on behalf of the Applicants attended. The Respondent attended. Both advised that the agreement reached had been that the Tribunal should grant an instalment decree for £100. However, it was explained to the parties that the Tribunal has no jurisdiction to grant orders for payment by instalment. The Applicant representative was asked to clarify the sum sought as the two sums stated in the application were not the same. A short adjournment was granted for her to seek further instructions. The Applicants' representative thereafter asked for an order to be granted. She confirmed the sum of the order should be the sum stated in the rent statement. She also confirmed that the intention would be for the Applicants still to allow payment over time.

The Respondent confirmed that she is not disputing the money is due and is not disputing the sum shown in the rent statement. Although she expressed concerns regarding the ability of the Applicants to enforce the order the Tribunal explained that in terms of the application, as the sum is not disputed and there was no defence lodged to the application, there would be no reason to postpone a decision and thus the Applicants are entitled to the order.

Findings in Fact:

- 1. The parties entered into a Short Assured Tenancy for the property with a start date of 1 December 2008 and a monthly rent of £450 payable in advance.**
- 2. As per the rent statement lodged, payments made between December 2017 and November 2018 amounted to £2,271.55 with a shortfall of £3,128.45.**
- 3. The Respondent moved out of the premises on 30 November 2018.**

Reasons for Decision

The Tribunal considered that the facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or
- (c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;
- (b) identifying what facts are agreed between the parties;
- (c) raising with parties any issues it requires to be addressed;
- (d) discussing what witnesses, documents and other evidence will be required;
- (e) discussing whether or not a hearing is required; and
- (f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Power to determine the proceedings without a hearing

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

The Respondent did not dispute that the arrears shown in the rent statement remained outstanding as of the date of the CMD. There was no opposition to the application. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case. The representations of the Respondent gave an explanation as to why the arrears arose but did not provide a defence and there was no dispute about the outstanding sum. The Tribunal was satisfied that the sum of £3,127.61 was a typographical error and that the sum shown in the rent statement and paper apart was the sum due.

In terms of the current legislation the Tribunal does not have the power to grant an instalment decree and thus grants an order for the full sum as the sum is due to be paid to the Applicants by the Respondent in terms of the tenancy agreement.

Decision

The Tribunal grants an order for payment of the sum of £3,128.45.

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.

P Hennig-McFatrige

Legal Member/Chair

31 January 2019
Date