

Housing and Property Chamber
First-tier Tribunal for Scotland



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 70 of the First Tier Tribunal for Scotland (Housing and Property) Chamber Regulations 2017 as amended.

Chamber Ref: FTS/HPC/CV/17/0542

Re: Property at 12 Victoria Street, Portknockie, Buckie, AB56 4LQ (“the Property”)

Parties:

Mrs Kathleen Mary Whyte, Westview Bungalow, Main Street, Garmond, Turriff, AB53 5TQ (“the Applicant”)

Ms Shiralee Kelbie, 12 Victoria Street, Portknockie, Buckie, AB56 4LQ (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member)

Angus Lamont (Housing Member)

Decision

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

BACKGROUND

- This was a full hearing after a case management discussion (CMD) held at Banff on 15th February 2018. At the case management discussion the respondent agreed she was the tenant in a lease of the Property and that some rent was due but there was no clarity of the amount outstanding due to lack of information about what housing benefit had been paid towards the rent by Moray Council (the Council). At the end of the CMD the convener directed that the respondent send to the Tribunal a copy of a second lease that she mentioned; a statement clarifying the amount paid by the Council in housing benefit towards the rent and a copy of the letter she referred to from the Council confirming payments of money towards the rent. The applicant was also asked to clarify whether there were any further sums received from the respondent or the Council towards the rent in addition to the sums set out in her statement of arrears.

- Prior to the Hearing the applicant's representative Mr Anderson of Alexander George & Co Solicitors lodged a new statement of rent outstanding at 30th April 2018 indicating the amount outstanding at that date was £4,873.22. The statement also showed sums paid from Moray Council of £448.48 for the months of December 2017, January, February and March 2018. The applicant's representative also lodged 2 letters from the Council to the applicant advising that the housing benefit claim from the respondent has been cancelled and that potentially there may have been an overpayment of housing benefit.
- The Respondent did not lodge any documentation.

The Hearing

At the hearing today the applicant was represented by Mr Calum Slessor solicitor from Alexander George & Co and the respondent appeared and represented herself. The Tribunal heard submissions from the applicant's representative and took evidence from the respondent in person and the applicant by telephone, as it was previously clarified she was not able to attend in person. At the end of the hearing the Tribunal was satisfied it had sufficient evidence to make a decision and advised the parties of their decision.

Findings in Fact

1. The Applicant and Respondent have entered a lease for the Property dated 1st April 2017 with a monthly rental payment due of £650.
2. A deposit of £650 was made by the Respondent and lodged with Deposit Scotland.
3. The Respondent still resides in the property as at today's date although the Applicant's representative believes they have served a Notice to Quit on the Respondent by recorded delivery. The Respondent denies having received it
4. The total rental due from 1st April 2017 to 30th April 2018 is £8,450 made up of 13 monthly payments of £650. The rental payment is due on the first day of each month.
5. The payments made towards the rental payment are as set out on the Applicant's statement namely: - £500 paid by the tenant between April and June 2017, £365.04 paid by the Council in October 2017 and £917.82 paid by the Council in November 2017. There were a further 4 payments of £448.48 of housing benefit paid by the Council direct to the applicant between December 2017 and March 2018. There were no payments towards the rent neither between May 2017 and September 2017 nor to date in April 2018.
6. The total paid towards the rent is £3576.78 leaving a sum due of £4873.22 as of 30th April 2018.
7. The Applicant's solicitor made a motion for an increase in the sum claimed to the sum currently outstanding of £4873.22.
8. The Respondent did not object to this motion.
9. The Respondent admitted that she owed the rent set out in the statement, namely £4,873.

10. The Respondent does not know why her housing benefit has been stopped.

Reasons for Decision

The Applicant gave evidence confirming the rent due was as set out in the updated statement of arrears of rent lodged by the Applicant's agent on 5th April 2018. Both parties agreed there was a lease and the rent due in terms of the lease was £650 a month. The Respondent freely admitted the rent was due that she had not paid towards it since the beginning of the lease due to her losing her job and although she had had some agency work she said she had not been in a position to pay any further sums.

The Respondent also admitted the sums due today were £4873.22. The application was dated 15th December 2017, and the original sum claimed was £4067.14. Mr Slessor made a motion at the Hearing for the sum to be increased to reflect the amount due today which includes the rental payment due on 1st April in terms of the lease. The Respondent did not object to this motion but the Tribunal questioned why they should grant it when the original application was made in December and the amount due as at December was £3618.66. The solicitor argued that as the Respondent was still in the property, and although a notice to quit had been served there may be an issue over whether it was received and in the meantime until she left the property rent would still accrue it was only reasonable to the landlord to grant an order for payment of the full amount due today.

The Tribunal considered the motion and noting that the rent arrears were admitted, there had been notice given to the Respondent of the increase in the amount due, both in writing and orally, and that it was likely as the Respondent had not found alternative accommodation, which she indicated she was seeking, that further rent arrears could accrue, agreed that it was fair and reasonable to grant the motion for amendment of the sum claimed in terms of Rule 13 of the First Tier Tribunal for Scotland Housing and Property (Rules of Procedure) Regulations 2017.

Given the Applicant has shown the sums due and claimed are outstanding and the Respondent has admitted to owing said sums the Tribunal was satisfied that an order for payment of £4873.22 by the Respondent to the Applicant should be granted.

DECISION

The Tribunal grants an order for payment by the Respondent to the Applicant of the sum of £4,873.22.

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

J Todd

Legal Member/Chair

Date

12th April 2018