

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 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/19/2466

Re: Property at 72A Main Street, Forth, Lanark, ML11 8AA (“the Property”)

Parties:

Mr Brian Riddell, 9 Braidholm Road, Giffnock, Glasgow, G46 6HF (“the Applicant”)

Miss Julie Aitken, whose current whereabouts are unknown (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision (in absence of the Respondent)

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

Background

This is an application for a payment order dated 7th August 2019 and brought in terms of Rule 70 (Application for civil proceedings in relation to an assured tenancy under the 1988 Act) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant sought in his application payment of arrears in rental payments and recoverable costs of £5,561.50 in relation to the Property from the Respondent. The Applicant provided with his application copies of the short assured tenancy agreement, form AT5, inventory, rent arrears statement, and report and receipts for remedial work undertaken to the Property after the Respondent left.

The short assured tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

The Respondent could not be validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal, as she could not be traced and her current whereabouts are unknown.

Service was validly effected by advertisement in terms of Rule 6A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, and the Tribunal was provided with the Certificate of Service by advertisement.

Case Management Discussion

A Case Management Discussion was held on 25th October 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant did not appear, but was represented by Mrs Casey, letting agent. The Respondent did not appear, nor was she represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

Mrs Casey invited the Tribunal with reference to the application and papers to grant an order for payment of £5,561.50, comprised of the rent arrears figure of £1,730.14 and damages of £3,831.36 in respect of the cost of returning the Property to the condition it was in at the commencement of the tenancy.

Mrs Casey explained that the Respondent had left the Property in a terrible condition after she departed around the 31st March 2019. The interior was mouldy due to inadequate ventilation by the Respondent, and was also filthy. Its condition was so bad that the Applicant had to instruct a number of trades to clear the property, carry out repairs, and to redecorate it and replace most of the floor coverings and window blinds.

Statement of Reasons

Section 16 of the *Housing (Scotland) Act 2014* provides as follows:

“16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2)But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3)Part 1 of schedule 1 makes minor and consequential amendments.”

Accordingly, the Tribunal now has jurisdiction in relation to claims by a landlord (such as the Applicant) for payment of unpaid rental against a tenant (such as the Respondent) under a short assured tenancy such as this.

The Tribunal considered the terms of the short assured tenancy agreement, inventory, rent arrears statement, and report and receipts for remedial work undertaken to the Property after the Respondent left together with Mrs Casey’s submissions, and was satisfied that this disclosed an outstanding balance due by the Respondent to the Applicant of £5,561.50. The tenant is liable for the cost of returning the Property to the condition it was in at the commencement of the tenancy as a result of her breach of clause 5 of the lease agreement.

Accordingly, the Tribunal shall make an order for payment of that sum.

Decision

In these circumstances, the Tribunal will make an order for payment by the Respondent to the Applicant of the sum of £5,561.50.

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.

N Kinnear

Legal Member/Chair

25/10/19

Date