



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/20/0773

Re: Property at 141/2f2 Granton Road, Edinburgh, EH5 3NJ (“the Property”)

Parties:

Mr Steven Campbell, 32 Firrhill Crescent, Edinburgh, EH13 9EG and Mr Blair Ramsay 119 Redhall Road, Edinburgh, EH14 2DH (“the Applicants”)

Ms Lesley McNeill, 46 Brierbush Road, Macmerry, Tranent, East Lothian, EH33 1PS (“the Respondent”)

Tribunal Members:

Steven Quither (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent is to pay to the Applicants the sum of TWO HUNDRED POUNDS (£200) STERLING ONLY

1. BACKGROUND.

This is an application for payment of arrears of rent up to rent due at conclusion of a tenancy constituted by Short Assured Tenancy commencing 4 November 2016 for a period of one year and continuing on a monthly basis thereafter until April 2019 and also the cost of repairs stated by the Applicants to be due by the Respondent, the overall sum originally being stated as £3544-65 but which was amended at commencement of the Case Management Discussion on 16 October 2020 (“CMD”) to £3094-65, the first of what turned out to be 4 CMDs in this matter.

**2. CASE MANAGEMENT DISCUSSIONS (all by teleconference)
16 OCTOBER 2020**

After allowing the Applicants’ amendment to the sum claimed, I clarified with them under what provisions of the Tenancy Agreement they were claiming for the damage, as opposed to the rent, head of claim.

I confirmed with the Respondent that whereas she disputed the damage head of claim, she did not dispute that part of the claim relating to one month's unpaid rent and also the further one month's rent due for failing to provide a month's period of notice to the Applicants when she vacated the property. Accordingly, the issues remaining to be resolved were solely in respect of the balance remaining of £2394-65, for the repair part of the claim and I was satisfied as to the parties' agreement on this ie that the Respondent was due to pay at least £700 and it was only the balance that was in dispute.

I further clarified that there did not seem to be any scope for agreement between the parties and then, in attempting to focus on what would be required for what seemed to be an inevitable full hearing, given how far apart the parties seemed, I suggested that the Applicants produce "hard copy" sets of photographs to assist the Tribunal. Quite out of the blue, Mr Campbell then stated that, in an effort to resolve matters, the Applicants would accept payment of, in essence, the outstanding 2 months rent of £1200 and would use the deposit of £500 as settlement of the repair part of the claim. I then adjourned the CMD for a short time to consider certain procedural aspects of this with my clerk, which short adjournment also afforded the Respondent time to consider this settlement offer, which I treated throughout, in the interests of fairness, as having been made "without prejudice".

When the CMD recommenced, I asked the Respondent for her views. Initially she did not feel she should lose her deposit but when I advised that it seemed a full hearing would again be necessary, she advised she would be prepared to proceed on the basis of what was suggested. After a fairly short but constructive discussion, the parties agreed that the Respondent would pay a minimum of £100 per month to pay off the £1200 rent due. The Applicants preferred to keep these proceedings pending, for settlement to be effected, on the basis that once settlement was made or they were sufficiently satisfied it would be made, the application would be withdrawn. The Respondent appeared to me to be sincere in her desire to see the matter resolved also.

I therefore adjourned the CMD for settlement to be effected, on the basis that the application would be withdrawn if settlement was achieved before any fresh date fixed and that if this arrangement between the parties fell down then any sums paid in the meantime could simply be deducted from the amended sum and the application could then recommence, dealing with that amended, lesser amount.

24 FEBRUARY 2021

A further CMD then took place on 24 February 2021, at which I was advised that the £500 deposit had been received by the Applicants and in addition the Respondent had paid £400 towards the outstanding rent figure of £1200. Both parties were keen to continue as previously and there was goodwill on both sides. Accordingly, I was content to fix a further CMD for 6 months or so hence, to allow full settlement to be effected and, again, on the basis that if settlement was effected before then, the application would be withdrawn.

22 JULY 2021

A further CMD then took place on 22 July 2021, at the request of the Applicants, where I was advised that a further £600 had been received by them, leaving a balance due of £200 in respect of the outstanding agreed rent figure of £1200.

The Respondent advised that she had had personal issues to attend to since the last CMD but these had now been addressed. As previously, there was goodwill on both sides to continue towards the agreed settlement. Accordingly, I was again content to fix a further CMD for several months or so hence, to allow full settlement to be effected and, again, on the basis that if settlement was effected before then, the application would be withdrawn. The Respondent confirmed she would hope to make payment of the £200 balance by October at the latest and the Applicants were content to afford her the opportunity to do so.

17 JANUARY 2022

Again, this took place at the request of the Applicants. Only the Second Applicant attended. However, I was advised at the outset that the Respondent had attempted to join but seemed to be repeatedly disconnected when she tried to do so. My clerk had repeatedly telephoned her but the calls had gone unanswered. I was keen to progress and hopefully finalise this long-running case, so adjourned from about 11-50am or so till 12-30pm for my clerk to continue her efforts to contact the Respondent and/or the Respondent to successfully join the CMD. Upon resumption at 12-30pm or so, I had sight of an e-mail my clerk had sent to the Respondent at 11-59am, to which there had been no response. I was also advised of further calls having been made to the Respondent but which had again gone unanswered.

Against this background, I confirmed with Mr Ramsay that the £200 balance discussed at the previous CMD was still outstanding. He advised that as of today, he had checked the relevant bank account, in case late payment had been made, but no such payment had been received. I asked him what he was asking me to do, since it appeared to me that if the Applicants were still seeking payment of this balance, they had 2 practical options available to them, namely to seek an order today or seek to fix a further CMD. He advised he wished the matter concluded and accordingly asked me to make the order for the £200 balance remaining of a larger sum previously conceded to be due at an earlier stage.

I was content it was just for me to do so.

At all CMDs, since any discussions between the parties took place in the course of the CMD, I was party to same. However, beyond seeking to ascertain their views and any update regarding the progress of the settlement agreement previously reached, I did not participate or seek to influence any decision made by them. I consider I acted justly and with informality and flexibility in facilitating the parties' settlement discussions, with a view to resolving this matter without further procedure being required. Both sides maintained willingness throughout to see the matter resolved and I felt it just to afford them the opportunity to do so.

3. FINDINGS IN FACT

By agreement of the parties, the Respondent was due and liable for arrears of rent up to 9 April 2019 in the sum of £1200 arising out of a Short Assured Tenancy between the parties commencing 4 November 2016, in respect of which the Respondent agreed to pay rent of £600 per month. As at January 2022, £200 of said sum remains unpaid.

4. REASONS FOR DECISION

I was prepared to accept the position as stated on behalf of the Applicants regarding the sum remaining outstanding, there being no contrary position placed before me. I was also satisfied the Respondent had had ample opportunity to pay the outstanding balance and also to participate in today's CMD and accordingly I was content to proceed, notwithstanding her absence. Given the length of time this matter has been outstanding and the amount involved, I felt it just to bring an end to proceedings by making the order sought, which I am content to do.

5. DECISION

To grant the order for payment sought by the Applicants in the sum of TWO HUNDRED POUNDS (£200) STERLING ONLY.

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.

SR QUITHER

17 JANUARY 2022

Legal Member/Chair

Date