



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/22/1539

Re: Property at 18 Moray Court, Auchtertool, Kirkcaldy, KY2 5XS (“the Property”)

Parties:

Mr Kenneth Peter Hendry, Mrs Lynne Hendry, 69 Milton Road, Kirkcaldy, Fife, KY1 1TP (“the Applicant”)

Miss Hayley Campbell, 2 Dundas Street, Lochgelly, KY5 9AQ (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to an order for payment from the Respondents for £2477.95 (TWO THOUSAND FOUR HUNDRED AND SEVENTY SEVEN POUNDS AND NINETY FIVE PENCE) plus interest at 4% per annum.

Background

1. This is an application in terms of Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). The Applicant is seeking an order for payment of the sum of £2477.95 plus interest at 4% per annum in terms of s16 of the Housing (Scotland) Act 2014.
2. On 8th August 2022, all parties were written to with the date for the Case Management Discussion (“CMD”) of 21st September 2022 at 2pm by teleconferencing. The letter also requested all written representations be submitted by 29th August 2022.

3. On 10th August 2022, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent by letterbox service. This was evidenced by Certificate of Intimation dated 10th August 2022.

Case Management Discussion

4. A CMD was held on 21st September 2022 at 2pm by teleconferencing. The Applicant was not present but was represented by Mr John McKeown, trainee solicitor, Jackson Boyd solicitors. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent did not make representations in advance of the hearing.
5. Mr McKeown told the Tribunal that there have been no payments made by the Respondent since October 2021. She left the tenancy on 4th February 2022. The Respondent was written to by Mr McKeown's firm in January and April 2022 but there has been no response to these letters. There have been no offers of payment. The arrears accrued to £3427.95 but the deposit was returned to the Applicant which reduced the arrears to the amount claimed of £2477.95. There is no known outstanding Universal Credit issues that would reduce the arrears.
6. The Tribunal raised the rate of interest with Mr McKeown. The application has asked for 8% per annum. This is high given the base rate is still low. There is no contractual obligation to this rate in the lease. The Tribunal stated that 4% seemed fair, reasonable and proportionate. Mr McKeown did not object to this amount.

Findings in Fact

7. The parties entered into a Short Assured Tenancy on 4th January 2017 for a 6 month period until 5th July 2017 and on a month to month basis thereafter. The rent payments of £850 are due by the 4th day of each month. A deposit of £950 was paid and held in a deposit scheme until it was released to the Applicant for part payment of the outstanding arrears.
8. The Housing and Property Chamber received an Application dated 23rd May 2022.
9. The Respondent has persistently not made rent payments. There have been more than 3 missed payments.
10. There are no outstanding Housing Benefit issues.
11. The arrears due to the Applicant amounts to £2477.95. This is because the deposit of £950 was deducted from the full outstanding amount of the arrears of £3427.95.

Reasons for Decision

12. The Respondent has failed to make payment of the rent lawfully due in terms of the lease between the parties. The Applicant has lodged a rent statement for the period 4th July 2019 to 4th February 2022 in which payments have been missed amounting to £3427.95 in rent arrears. The deposit of £950 was returned to the Applicant by the tenancy deposit scheme to partially address the arrears. The Tribunal decided that the Respondent had persistently not paid the rent and was in arrears. As a consequence the Applicant was entitled to be granted the Order for payment of £2477.95 plus interest of 4% per annum against the Respondent.

Decision

13. The Applicant is entitled to an order of payment of £2477.95 plus interest of 4% per annum by the Respondent. The Order was granted against the Respondent.

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.

Gabrielle Miller

Legal Member/Chair

21st September 2022
Date