

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/18/1445

Re: Property at 10 Charleston View, Cove, Aberdeen, AB12 3QG (“the Property”)

Parties:

Mr Hing Chin, Mrs Florence Chong, 1 Talwin Street, London, E3 3NF (“the Applicant”)

Mr Patrick Idahosa, Mrs Bukola Deji Idahosa, 10 Charleston View, Cove, Aberdeen, AB12 3QG (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member)

Decision

Parties:

Mr Hing Chin, Mrs Florence Chong, 1 Talwin Street, London, E3 3NF (“the Applicant”)

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

This is an Application for civil proceedings in respect of unpaid rent made in terms of Rule 70 of the First Tier Tribunal Rules of Procedure. The Applicants were represented by Mr McLoone Solicitor and the Respondents were represented by Mr Idahosa the first Respondent. The Tribunal had sight of the application, the tenancy agreement, the Form AT5, the Notice to Quit, Notice in terms of S33 of the 1988 Act, e mail correspondence and execution of service of these documents, together with a schedule of unpaid rent. The Tribunal also had sight of written representations for the Respondents and a letter from Shelter Scotland sent on their behalf.

The Hearing/Case Management Discussion

On behalf of the Applicants Mr McLoone sought to amend the figure sought by way of unpaid rent to £20,800 to bring this update to include the current month to end on 16th September 2018. On behalf of the Respondents Mr Idahosa did not oppose the request to amend and agreed that the figure was correct in terms of the rent that was owed. The Tribunal allowed the amendment.

On behalf of the Respondents Mr Idahosa sought an adjournment of the case management discussion in order that solicitors assisting him could raise Judicial Review proceedings in respect of a decision made by Aberdeen City Council Social Work Department not to give financial assistance to his four children. Mr Idahosa explained to the Tribunal that he and his wife cannot currently work pending a decision by the Home Office on their visa applications and have no financial means at all in order to live but were currently being assisted by the British Red Cross, having been assessed as not being entitled to receive state benefits. This was the reason he explained that he and his wife were unable to pay rent and had not been able to do so for over a year. Although Mr Idahosa was hopeful that Judicial Review proceedings would be raised very quickly by his solicitor and he believed these would be successful in allowing his children to be financially supported and rent to be paid to the landlord, he could not advise of a date when these proceedings might take place.

The application to postpone was opposed by the Applicant's representative who pointed to the length of time that rent had been unpaid and the nature of the accompanying application under s 33 of the 1988 Act in which the Tribunal had no discretion about whether an order should be granted or not if the terms of the section had been complied with. He said the Respondents had "no defence" as such to the application for a possession order. He also pointed to the fact that there was no date by which any application by the Respondents for Judicial Review might take place, Mr Idahosa having simply been informed by solicitors that this could go ahead.

Having regard to all matters including the background set out in the letter from Shelter Scotland and the very difficult circumstances facing the Respondents and their family as set out in detail by Mr Idahosa, the Tribunal was of the view that on balance and despite these circumstances an adjournment was not appropriate. The Tribunal had no information as to when proceedings would be raised and if these would be successful and it appeared that the issue of judicial review of a decision by a local authority to refuse assistance had no bearing on the Application of Section 33 of the Housing (Scotland) Act 1988 in which the Tribunal had no discretion and there was no provision in the Act itself for consideration of the "reasonableness" or otherwise of such an application under the Act. There was simply no information before the Tribunal which might suggest there was a reasonable prospect of the Respondents being able to pay the rent for the property or clear the substantial arrears. The request for an adjournment was therefore refused.

The Respondents did not dispute that the sum of £20,800 was due to the Applicants in respect of rent at the property 20 Charleston View Cove Aberdeen AB12 2QG including the rent due up to 16th September 2018. Mr Idahosa explained to the Tribunal in detail how the arrears had come about as he and his wife had been unable to work due to the visa issues described above. He advised that the Respondents have no means currently to make payment of rent or the arrears.

Findings In Fact

The Tribunal was satisfied that the tenancy agreement between the parties which commenced in November 2016 required the Respondents to pay to the Applicants rent of £1300 per month in respect of the property and that this had not been paid for over one year resulting in arrears amounting to £20,800. This was not disputed by the Respondents.

Reasons for Decision

The Tribunal was satisfied that the sum of £20800 in unpaid rent is lawfully due by the Respondents to the Applicants in respect of the property at 10 Charleston View Cove Aberdeen AB13 3QG.

Decision

The Tribunal made an order for payment of £20,800 being rent lawfully due by the Respondents to the Applicants.

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.

VALERIE BREMNER

Legal Member/Chair

3rd September 2018

Date