

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/18/0039

Re: Property at 85b Tower Drive, GOUROCK, PA19 1TD (“the Property”)

Parties:

Mr Daniel McAleese, Mrs Vanessa McAleese, 92H Tower Drive, Gourrock, PA19 1TL (“the Applicants”)

Ms Jay Millar, c/o 38 Wren Road, Greenock, PA16 7NH (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member)

Decision(in absence of the Respondent)

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

Background

1. This is an application by the Applicants for civil proceedings in relation to an assured tenancy in terms of rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”), namely an order for payment of rent arrears. The tenancy in question was a Short Assured Tenancy of the Property by the Applicants to the Respondent dated 31 May 2017.
2. The application was dated 4 January 2018 and lodged with the Tribunal shortly thereafter. The application was accompanied with a rent statement showing purported arrears as at 12 January 2018 of £3,600, being unpaid rent of £450 across eight consecutive months (12 June 2017 to 12 January 2018). The lease for the said tenancy also accompanied the application and bore a rental payment of £450 per month, payable on the 12th of each month. The application sought an order for £3,600.

The Hearing

1. On 1 June 2018, at a case management discussion ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting at Gamble Halls, Gourrock, I was addressed by Sharon Dolan, solicitor at Neill, Clerk & Murray, being the agent for the Applicants.
2. There was no appearance by the Respondent. The Tribunal had received a report from its Sheriff Officer on 20 April 2018 in which the Respondent's mother indicated that the Respondent "had moved out of the subject property in October 2017". The said intimation by the Sheriff Officers was of the date of the CMD and was made to a new address for the Respondent, being her mother's address. The Applicant's agent confirmed that no direct contact had been received from the Respondent in regard to the notices or the application. I was advised of no contact received from the Respondent by the Tribunal. I was satisfied in the circumstances to proceed in the absence of the Respondent.
3. The Applicants' agent confirmed that the order sought remained £3,600 in respect of the eight months narrated in the application and supporting papers.
4. I sought submissions from the Applicants' agent on the claim for arrears of 12 December 2017 and 12 January 2018. The application called alongside an eviction application EV/18/0038 in which the Applicants had sought eviction of the Respondent from the Property on the basis of a Notice to Quit and Section 33 Notice bringing the lease to a conclusion on 12 December 2017. The application papers in that application, and in this application, made reference to environmental health issues occurring due to the Respondent leaving the Property – and not apparently returning – prior to 12 December 2017. The report from the Tribunal's Sheriff Officers contained the comment from the Respondent's mother that she had left the Property in October 2017.
5. In all the circumstances, I asked the Applicant's agent to confirm whether the Applicants wished to insist on a contractual payment for rent for a period after their Notice to Quit which, on its face, may have been complied with. On consideration, the Applicant's agent was satisfied to restrict the application to a claim for arrears of rent up to 12 December 2017 (that is, for payments due through to 12 November 2017) and to reserve the Applicants' position on returning to the Tribunal with a further application, perhaps after repossession had been obtained.
6. The application did not seek interest on the arrears but the Applicant's agent confirmed that interest was being sought in terms of the contractual rate shown at clause 2.2 of the Lease, being 4% per annum over the base rate from time to time of Royal Bank of Scotland plc.

7. The Applicant's agent confirmed no order in respect of expenses was to be made.

Findings in Fact

8. On 31 May 2017, the Applicants let the Property to the Respondent by lease (stating it was a Short Assured Tenancy) with a start date of 12 June 2017 and an end date of 12 December 2017 ("the Tenancy").
9. Under the Tenancy, the Respondent was to make payment of £450 per month in rent to the Applicants on the 12th of each month.
10. As of 12 November 2017, there was unpaid rent of £2,700 due by the Respondent to the Applicants in terms of the Tenancy in respect of the rent due for the period of occupation from 12 June to 12 December 2017.
11. On 4 January 2018, the Applicants raised proceedings for an order for payment of rent arrears of £3,600.
12. The Respondent provided no evidence of payment of any part of the said unpaid rent due to 12 November 2017 of £2,700.
13. Clause 2.2 of the lease between the parties allows for interest at 4% per annum above the base rate from time to time of Royal Bank of Scotland plc.

Reasons for Decision

14. The application was in terms of rule 70, being an order for civil proceedings in relation to assured tenancies. I was satisfied, on the basis of the application and supporting papers, and the submissions provided by the Applicant's agent at the CMD, that rent arrears of £2,700 were outstanding as at the date of the CMD in respect of the period from 12 June to 12 December 2017, such sum being due for payment as at 12 November 2017.
15. The application having been raised for £3,600, I was satisfied that the necessary level of evidence for such civil proceedings on the restricted sum of £2,700 with contractual interest had been provided. Though interest was not specified within the application, the lease was part of the application.
16. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal and I was satisfied to make a decision at the CMD to award the restricted sum of £2,700 against the Respondent along with interest at the contractual rate from 12 November 2017 until payment.

17. I would note that my decision is in regard to contractual arrears of rent for the period concluding 12 December 2017 only. I note that the Applicants reserve their position on returning to the Tribunal for any further claims, whether they be contractual claims for payment or in damages, after they have assessed the position further. I make no comment on such potential further claims.

Decision

18. In all the circumstances, I was satisfied to make the decision to grant an order against the Respondent for payment of the sum of £2,700 to the Applicants along with interest at the rate of 4% per annum above the base rate from time to time of the Royal Bank of Scotland plc from 12 November 2017 until payment.

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.

J Conn

Legal Member/Chair

1 June 2018

Date