

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber), under rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

Chamber Ref: FTS/HPC/CV/19/0353

Re: 10 Myreside Crescent, Carntyne, Glasgow G32 6EB (“the property”)

Parties:

Mrs Maria Susanna Leoni, Via P Martinez, 1100151, Rome, Italy
(“the applicant”)

Mr Thomas McKay and Mrs Jean McKay, 2 Maybole Drive, Airdrie, ML6 8XJ
(“the respondents”)

Tribunal Member:

Adrian Stalker (Legal Member)

Background

1. This is an application under rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Procedure Regulations”). The applicant is the owner of the property, 10 Myreside Crescent, Carntyne, Glasgow. In 2014, the parties entered into a short assured tenancy agreement, in terms of which the applicant let the property to the respondents for a period of six years, from 28 November 2014, to 27 November 2020. A copy of the agreement has been produced by the applicant. The agreed rent for the property was £600 per month till 30 June 2015, then £650 per month till 30 June 2016, then £700 per month till 30 June 2017; and thereafter £750 per month till the end of the tenancy.

2. The applicant claims that the respondents left the property in May 2017, some time before the end of the agreed period of the lease. The application states that the applicant had arrears of £4,375. It also states that the respondents are due to pay “interest thereon” of £643.80.

3. The application further seeks damages for “breach of the tenancy”, for:

- i. Damage to and neglect of the tenancy subjects;
- ii. Legal fees of £1,186.80 in having the new lease put in place; and
- iii. Legal and tracing fees of £1,362 pursuing respondents.

4. Attached to the application are various invoices in support of these claims.

CMD

5. A case management discussion (“CMD”) was fixed on 24 May 2019 at the Glasgow Tribunals Centre, 20 York Street, Glasgow.

6. The Tribunal attempted to serve notice of the CMD on the respondents, at 2 Maybole Drive, Airdrie. The report of sheriff officers of 12 March states that they could not effect service at that address, as they were “unable to establish whether Mr and Mrs McKay were still resident there.” Accordingly, the Tribunal effected service by advertisement under rule 6A of the Procedure Rules, from 12 April to 16 May 2019.

7. The CMD duly took place on 24 May 2019. The applicant was represented by her solicitor, Yvonne Morgan of Morgan Legal Solutions Ltd, 113 West Regent Street, Glasgow. The respondents did not appear, and were not represented.

8. Miss Morgan asked for a payment order to be granted in respect of the claims made in the application.

9. On the basis of the rent account produced by Miss Morgan, showing a balance due of £4,375, which had accumulated after 1 July 2016, the Tribunal was prepared to grant an order for that amount. It was also prepared to allow interest at the rate of 7.25% per annum, being 6% above base rate, under clause 9 of the parties’ lease.

10. The Tribunal restricted the claim for “damage to and neglect of the tenancy subjects” to the £257 paid by the applicant to have the locks changed. Invoices in respect of that sum were produced with the application. The lock change was necessary, because the respondents had abandoned the property without handing in the keys.

11. An invoice was also provided, with the application, for the sum of £120 for repair to the boiler at the property. The Tribunal questioned whether that was due to be paid by the respondents, in the absence of evidence that the repair was necessitated by some act or omission on their part. Ms Morgan confirmed that she did not have evidence to that effect, and that she would drop the claim relating to that invoice.

12. As regards the claim for “legal fees of £1,186.80 in having the new lease put in place”; that appeared to the Tribunal to be reasonable in the circumstances. At the point when the respondents left, in May 2017, there was still more than three years to run on the lease. Therefore, the applicant lost rental income. She appears to have minimised that loss by finding new tenants who began paying rent on 1 September 2017.

13. The applicant sought the rental payments that would have been due by the respondents for May, June, July and August 2017 (as part of the rent arrears of £4,375), and the sum of £1,186.80 for the costs of finding new tenants, and arranging a new lease. That seemed to the Tribunal to be a reasonable estimate of the applicant’s losses, arising from the respondents’ breach of contract. Accordingly, that aspect of the claim was allowed.

14. The Tribunal was not, however, prepared to make an order in favour of the applicant in respect of the legal and tracing costs associated with pursuing this application. The scope for awards of expenses, under rule 40 of the Procedure Rules, is limited, and Miss Morgan did not suggest that rule 40 applied in this case. There was no provision in the parties’ lease under which such a claim could be made.

15. The claims allowed by the Tribunal were therefore:

- £4,375 for rent arrears
- £731.17 for interest thereon
- £257 for the cost of a lock change
- £1,186 for the expenses associated with finding new tenants

16. That is a total of £6,549.17.

Decision

17. Under rule 17(4) of the Procedure Rules, the Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

18. In the circumstances hereinbefore described, and there being no appearance by the respondents, and therefore no opposition to a payment order, the Tribunal granted a payment order in the sum of £6,549.17.

19. In terms of rule 41A(2)(a) of the Procedure Rules, the Tribunal orders that interest is payable on that sum, from the date of this decision, at the rate of 6% above the Base Lending Rate for the time being of the applicant’s bankers, that being the rate of interest in terms of the clause 9 of the tenancy agreement.

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.

Signed



Date

17 May 2019