

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 70 of the Housing (Scotland) Act 2014 (“the 2014 Act”) and Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/CV/18/1235

Re: Property at Flat 14, 4th Floor, 15 Whitehall Crescent, Dundee, DD1 4AR (“the Property”)

Parties:

I Jamal Property Investments Letting and Management, 2/4 South Tay Street, Dundee, DD1 1PA (“the Applicant”)

Tania Royle, Solicitor, Baillie Shepherd Solicitors, 37 Union Street, Dundee, DD1 4BS (“the Applicant’s Representative”)

Mr Joe Morgan, 71 Minto Crescent, Glenrothes, Fife, KY6 1LR (“the Respondent”)

Tribunal Members:

Susanne L M Tanner Q.C. (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined that the Respondent should pay to the Applicant the sum of TWO THOUSAND ONE HUNDRED AND FIFTY POUNDS (£2,150.00) STERLING; together with interest from the date of the order at a rate of eight per cent per year; and made an Order for Payment in respect of the said sum and interest.

1. Procedural background

- 1.1. The Applicant's Representative made an Application to the tribunal on 17 May 2018 in terms of Section 16 of the 2014 Act and Rule 70 of the 2017 Rules, seeking an order for payment against the Respondent and a second named respondent, Carol Gell, 71 Minto Crescent, Glenrothes, Fife, KY6 1LR ("the Second Named Respondent"), in the sum of £2150.00 in respect of rent arrears, with interest at a rate of 8% until payment received.
- 1.2. The Application was referred to a tribunal on 29 May 2018.
- 1.3. A CMD was held on 15 August 2018. Parties were notified of the date, time and place of the CMD. The Respondent and the Second Named Respondent were invited to submit written representations to the Application by 2 August 2018. No written representations were submitted. The Applicant's Representative attended the CMD. The Respondent and the Second Named Respondent did not attend.
- 1.4. At the CMD an up to date rent statement was produced by the Applicant's representative which showed the rent arrears up to the termination of the tenancy on 16 August 2018. The Legal Member chairing the CMD queried the validity of the guarantor agreement. The CMD was adjourned in order for the Applicant's representative to undertake investigations surrounding the appointment of the guarantor and produce evidence in support of the application in so far as directed against the Second Named Respondent. Thereafter the Application was to be considered again at an adjourned CMD, in light of any new evidence produced.
- 1.5. On 20 August 2018, the Applicant's Representative advised that the Applicant was unable to produce any additional evidence relative to the Second Named Respondent as guarantor and thereafter the Applicant amended the Application 'Form F' to remove the Second Named Respondent and pursue the Application in relation to the Respondent as the sole respondent.
- 1.6. The CMD was adjourned until 12 October 2018 and the date, time and place was notified to parties. Service was effected on the Respondent on 27 September 2018. The Respondent was invited to submit written representations as soon as possible prior to the CMD. No written representations were submitted.

2. CMD – 12 October 2018 at 1400h

- 2.1. The Applicant's Representative attended the CMD.
- 2.2. The Respondent did not attend the CMD and it proceeded in his absence.
- 2.3. The Applicant's Representative made submissions on the basis of the Application as amended.

3. Findings-in-Fact

- 3.1. The Short Assured Tenancy agreement for the Property was signed on 11 November 2016 and commenced on 17 August 2017.
- 3.2. The Property was let as a student let for a period of one year, with an expiry on 16 August 2018.
- 3.3. The parties to the short assured tenancy agreement were the Applicant as appointed managing agent for the landlord and the Respondent at tenant.
- 3.4. Rent was payable at the rate of £410.00 per calendar month, payable in advance on 17th day of each calendar month.
- 3.5. Rent arrears accrued during the tenancy. On 20 March 2018 the Respondent made a payment of £205 and thereafter no further payments were made.
- 3.6. The Respondent vacated the Property in or around May 2018.
- 3.7. The Respondent has not been in contact with the Landlord since he vacated the Property.
- 3.8. The Applicant had entered into a new Private Residential Tenancy for the Property which commenced in August 2018.
- 3.9. In the period from May 2018 until 16 August 2018, the Applicant could have not have done anything to mitigate the loss of the ongoing rent arrears attributable to the Respondent.
- 3.10. The rent arrears as at 16 August 2018 amounted to £2150.00

4. Reasons for Decision

- 4.1. The Short Assured Tenancy states that the start date of the tenancy is 17 August 2017 and the termination date is 16 August 2016. The Applicant's Representative submitted in the paper apart with the Application that that was clearly a typographical error given the start date of the tenancy was 17 August 2017 and the date that the Short Assured Tenancy was signed on 11 November 2016. The tribunal accepted those submissions and proceeded on the basis that in respect of the correct year for the termination date, and that the inclusion of 2016 in the tenancy agreement was a typographical error and that it should be 2018, giving a termination date of 16 August 2018
- 4.2. The tribunal accepted the Applicant's evidence and submissions relative to the fact that the tenant left the Property in or about May 2018, before the termination date, and that the last payment of rent was made on 17 March 2018, at which point there were already rent arrears. The tribunal accepted the Applicant's evidence, with reference to the Rent Statement dated 17 August 2018, that as at the termination date on 16 August 2018, there were rent arrears amounting to £2150.00.
- 4.3. The tribunal accepted the Applicant's Representative's submissions relative to the question of mitigation of loss in the period from May 2018, when the Respondent vacated the Property until the termination date of the tenancy on 16 August 2018. The Applicant had already entered into a Private Residential Tenancy ("PRT") which was due to commence in August 2018, upon the termination of the previous Short Assured Tenancy. The only kind of tenancy which the Applicant could have entered into in the period from May to August 2018 would have been a PRT and such a tenancy cannot be terminated by the landlord on a "no fault basis", therefore he could not have entered into such a tenancy, having already entered into a PRT commencing in August 2018. In the circumstances, there is nothing he could have done to mitigate the loss caused by the Respondent's failure to pay rent, other than the Application to the tribunal, which was made on 17 May 2018.
- 4.4. As the tribunal was satisfied that the Respondent owes £2150.00 to the Respondent by way of rent arrears, the tribunal made an Order for Payment in respect of the rent arrears in the sum of £2150.00. The tribunal included in the Order for Payment an order for interest to run at eight per cent per year on the principal sum from the date of the Order for Payment until payment is made.

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.

Susanne Tanner

12 October 2018

Susanne L M Tanner Q.C.
Legal Member/Chair