



**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/18/0464

Re: Property at 8 Secaurin Avenue, Stonehouse, ML9 3NZ (“the Property”)

Parties:

Mrs Jeanette Watson, Neuk Farm, Stonehouse, Larkhall, ML9 3PS (“the Applicant”)

Mr Thomas Cronin, 61 Craigbank Street, Larkhall, ML9 1JP (“the First Respondent”)

Ms Leeann McCallum, 61 Craigbank Street, Larkhall, ML9 1JP (“the Second Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision (in absence of the Respondents)

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

Background

This is an application for a payment order dated 21st February 2018 and brought in terms of Rule 70 (Application for civil proceedings in relation to an assured tenancy under the 1988 Act) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended.

The Applicant seeks payment of arrears in rental payments of £1,302.41 in relation to the Property from the Respondents, and provided with her application copies of the short assured tenancy agreement and copy rent arrears statement. The Respondents vacated the property on 29th October 2017 in compliance with a notice to quit and section 19 notice served on them by the Applicant.

The First Respondent, Mr Thomas Cronin, had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 11th April 2018, prior to a Case Management Discussion on 3rd May 2018, and I was provided with the executions of service. He was served personally by sheriff officers in what he confirmed to them was his correct address at 61 Craigbank Street, Larkhall, ML9 1JP, after they failed to locate him at the address of 16 Craigbank Street, Larkhall originally given for the Respondents in the application.

Due to administrative oversight, the second Respondent, Ms Leeann McCallum, was not served with the notification, application, papers and guidance notes from the Tribunal until 24th April 2018, prior to the said Case Management Discussion on 3rd May 2018, and I was again provided with the executions of service. Again, she was served by sheriff officers at what they had established was her correct address at 61 Craigbank Street, Larkhall, ML9 1JP, after they failed to locate her at the address of 16 Craigbank Street, Larkhall originally given for the Respondents in the application.

Case Management Discussion of 3rd May 2018

A Case Management Discussion was held on 3rd May 2018 at Pat Cullinan Community Centre, Logans Road, Motherwell. The Applicant did not appear in person, but was represented by Jennifer Rowlinson, solicitor. Neither Respondent appeared in person, nor were they represented.

Two preliminary issues arose, which I discussed with Ms Rowlinson.

Firstly, I apologised on behalf of the Tribunal that through oversight it had not served the papers on the second Respondent until 24th April 2018. This caused a difficulty with making any decision or order at the Case Management Discussion against the Second Respondent, as service was effected on her only 9 days before it.

Rule 24(1) (Hearings) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended provides that the Tribunal must give each party reasonable notice of the date, time and place of a hearing. Rule 24(2) provides that the notice period for a hearing must be no less than 14 days from the date of receipt of the notice, unless the other parties consent to a shorter period or there are urgent or exceptional circumstances.

The Second Respondent had not been given 14 days' notice of the Case Management Discussion, she has not consented to a shorter period, and Ms Rowlinson accepted that there were no urgent or exceptional circumstances.

Secondly, it appeared from sheriff officers' report on service of the papers by the Tribunal that the address of both Respondents' on the application was incorrect, in that they reside at 61 and not 16 Craigbank Street.

Ms Rowlinson indicated that she would wish to carry out further enquiries on behalf of her client regarding the correct address for the Respondents, before deciding whether to seek to amend the address in the application. She also indicated that the Applicant would continue to seek an order for payment against both Respondents

jointly and severally, and accepted that no order could be made on the 3rd May 2018 against the second Respondent as a result of the above-mentioned lack of appropriate notice.

In all other respects, the application appeared to be in order and all the necessary material had been provided to the Tribunal in the application.

In these circumstances, Ms Rowlinson invited me to continue the Case Management Discussion to a further date, in order to allow both Respondents to be validly served with notification of that hearing and to allow her to make enquiries regarding both Respondents' correct address with a view to deciding whether the Applicant might wish to amend the address given in the application in terms of Rule 13 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended.

Ms Rowlinson also invited me to hold the continued Case Management Discussion in Glasgow, where her office is situated. It seemed reasonable to assume that the Respondents might well not attend that hearing in light of their non-attendance on 3rd May 2018, and would save expense to her client in not paying for her representative to travel to Motherwell and back for that continued hearing.

I considered Ms Rowlinson's submission to be reasonable in the circumstances, and consistent with the overriding objective of the Tribunal to deal with proceedings justly and in a manner which is proportionate to the complexity of the issues and the resources of the parties in terms of Rule 2 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended. Rule 17(1) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended allows me to order a Case Management Discussion to be held in any place where a hearing may be held.

I adjourned the Case Management Discussion on cause shown for the above-mentioned reasons in terms of Rule 28(1) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended, to a Further Case Management Discussion on 5th June 2018 at 10.00am at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT.

Further Case Management Discussion of 5th June 2018

A Further Case Management Discussion was held on 5th June 2018 at Glasgow Tribunals Centre, Room 111, 20 York Street, Glasgow. Again, the Applicant did not appear in person, but was represented by Ms Rowlinson. Again, neither Respondent appeared in person, nor were they represented.

I was provided with executions of service by recorded delivery on both Respondents, intimating the details of today's Further Case Management Discussion on them.

I noted that the Applicant had on 10th May 2018 by letter of that date sought to amend her application by changing the address given for each respondent from 16 Craighbank Street, Larkhall, ML9 1JP to 61 Craighbank Street, Larkhall, ML9 1JP.

Through a further unfortunate administrative oversight, this written amendment was not intimated upon the Respondents by the First-tier Tribunal as Rule 13(3) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended provides it must, unless made orally during the hearing in accordance with paragraph 2(a).

Rule 13(1)(b) provides that a party may amend during a hearing with the consent of the First-tier Tribunal and on such conditions, if any, as the First-tier Tribunal thinks fit.

Rule 13(2)(a) provides that if an amendment is made during a hearing, then the terms of the amendment may be stated orally in the presence of any other party and noted by the First-tier Tribunal.

I was invited by Ms Rowlinson orally at today's hearing, after I had indicated to her that her written amendment had not been intimated to the Respondents in terms of Rule 13(3), to note an amendment to the application by changing the address given for each respondent from 16 Craigbank Street, Larkhall, ML9 1JP to 61 Craigbank Street, Larkhall, ML9 1JP. She then further invited me with reference to the application and papers to grant an order for payment in the sum of £1,302.41 against the First and Second Respondents jointly and severally.

Statement of Reasons

Section 16 of the Housing (Scotland) Act 2014 provides as follows:

"16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3) Part 1 of schedule 1 makes minor and consequential amendments."

Accordingly, the Tribunal now has jurisdiction in relation to claims by a landlord (such as the Applicant) for payment of unpaid rental against a tenant (such as the Respondents) under a short assured tenancy such as this.

I was satisfied that both Respondents had been validly served with this application, and that they had both been sent valid and timeous intimation of the details of today's Further Case Management Discussion.

I consider that the original written amendment dated 10th May 2018 made by the Applicant was not effective against the Respondents, as it was not intimated upon the Respondents by the First-tier Tribunal as Rule 13(3) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended provides it must, unless made orally during the hearing in accordance with paragraph 2(a).

However, in the circumstances, I consent to the oral amendment to the application by changing the address given for each respondent from 16 Craigbank Street, Larkhall, ML9 1JP to 61 Craigbank Street, Larkhall, ML9 1JP made by Ms Rowlinson on the Applicant's behalf, without imposing any conditions, and as stated orally by her and noted by the First-tier Tribunal. In these circumstances, the requirement on the First-tier Tribunal to intimate the amendment to the Respondents in writing in terms of Rule 13(3) does not apply.

Having done so, the Tribunal considered the terms of the short assured tenancy agreement and the copy rent arrears statement provided, and was satisfied that this disclosed an outstanding balance of rent arrears in the sum sought of £1,302.41. Accordingly, the Tribunal shall make an order for payment of that sum.

Decision

In these circumstances, I will make an order for payment by the First and Second Respondents jointly and severally to the Applicant of the sum of £1,302.41.

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.

N Kinnear

Legal Member/Chair

05/06/18

Date