

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 1988.

Chamber Ref: FTS/HPC/CV/19/1887

Re: Property at Flat 2/02, 13 Niddrie Square, Glasgow, G42 8QX (“the Property”)

Parties:

Mr Glen Duncan, 21/2 Livingston Road, Edinburgh, EH9 1PD (“the Applicant”)

Mr Rory Davidson, ADDRESS UNKNOWN, ADDRESS UNKNOWN (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the respondent shall make payment to the applicant of the sum of six hundred and eighty pounds and fifty three pence (£680.53)

This was the second case management discussion in connection with an application in terms of rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Rules 2017, ‘the rules’ and s16 of the Housing (Scotland) Act 2014, ‘the Act’. A first CMD on 1 October 2019 was adjourned and directions were made.

The tribunal had before it the following copy documents:

1. Application dated 19 May 2019 and received by the tribunal on 18 June 2019.
2. Statement of claim.
3. Copy bank statements.
4. Charge for payment.
5. Letters from sheriff officers dated 25 January 2019 and 1 February 2019.
6. Certificate of service by advertisement dated 1 October 2019.

7. Certificate of service by advertisement dated 8 November 2019.
8. Email from applicant dated 4 November 2019.

Discussion

The applicant attended the CMD via conference call. The respondent did not attend and was not represented. The tribunal had sight of the certificate of service by advertisement which noted that intimation was carried out to the respondent on the website between 7 October 2019 and 8 November 2019. The tribunal proceeded with the CMD in terms of rule 29.

The application was an unusual one as narrated in the CMD note of the 1 October 2019. The applicant's position was that he was a tenant in the property at Flat 2/02 13 Niddrie Square Glasgow between May 2017 and October 2017. He states that he paid rent to the respondent, who was also a tenant in the property and part of the rent was in respect of council tax. The applicant was served with a charge for a payment by sheriff officers in December 2018. The applicant contacted the sheriff officers and arranged to pay council tax for the period of his occupation in the property amounting to 599.37 plus the sheriff officer's fee of £81.16 totalling £680.53.

The statement of claim attached to the application sets out the applicant's legal arguments regarding the tenancy. The applicant's position is that the tenancy is a short assured tenancy as it was entered into in May 2017 before the Private Housing (Tenancies) Scotland Act 2016 came into force. The applicant was unable to provide a copy of the lease.

The application seeks an order for £980.21 first CMD on 1 October 2019 was adjourned and the tribunal made a direction for the applicant to lodge details of the amount of council tax he alleges he paid to the respondent as there appeared to the tribunal to be an element of 'double counting'. The applicant was also to lodge details of any amended sum sought and how that sum arrived at. The further documents were to be lodged by 15 October 2019. The applicant did not lodge the further information until 4 November 2019. The tribunal however noted that the applicant is now seeking the sum of £680.53 which is the sum that he is paying to the sheriff officer's in respect of council tax arrears at the rate of £40 per month.

Findings in fact and law

1. The applicant and respondent were joint tenants in the property at flat 2/02 13 Niddrie Square Glasgow, 'the property' between 13 May 2017 and 13 October 2019.
2. The applicant paid the sum of £322 per month to the respondent in respect of rent and council tax for the property.
3. The respondent failed to pay the council tax for the property and arrears accrued.

4. The applicant was served with a charge for payment on 19 December 2018 for council tax arrears for the property owed by both the applicant and respondent jointly and severally.
5. Glasgow City council reduced the amount due to £599.37 since the applicant had been paying council tax for another property from 13 October 2017 plus the sum of £81.16 in respect of the sheriff officer's fee.
6. The applicant is repaying the sum of £599.37 at the rate of £40 per month.

Reasons

The tribunal noted that there was no copy lease lodged with the application. The tribunal heard oral evidence from the applicant at the first CMD regarding the arrangement he entered into with the respondent. The application also gave evidence regarding the various matters raised in the statement of claim. The applicant also lodged copy bank statements which were in support of his version of events. The applicant also lodged copies of the documents sent to him by the sheriff officers which confirmed the higher amount of £1429.68 and the reduced sum of £599.37 plus fees of £81.16 which accrued during the applicant's period of occupation of the property.

The tribunal noted that the applicant had not complied with the direction timeously in advance of the second CMD however there was no prejudice to the respondent as the applicant was now seeking a lower sum than was contained in the statement of claim.

The tribunal was satisfied that it had sufficient information before it to make a decision and the procedure has been fair.

In the absence of any contrary evidence the tribunal was satisfied on the balance of probability that the parties agreed that the respondent would pay the council tax from the monthly payment of £322 to cover rent plus council tax. The tribunal is satisfied that an order for the sum of £680.53 should be granted as the applicant has been pursued for this sum and is repaying this sum at the rate of £40 per month. This sum relates to council tax arrears which accrued during the applicant's occupation of the property and during which time it also appears that the respondent was in occupation and in receipt of the sum of £322 per month from the applicant to cover rent and council tax payments.

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.

Lesley Ward
Legal Member/Chair

8 November 2019

Date