

Housing and Property Chamber
First-tier Tribunal for Scotland



Statement of Decision 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/18/0118

Re: Property at 35 Maude Close, Kirkliston, Edinburgh, EH29 9FA (“the Property”)

Parties:

Home Group Limited, 20 Harvest Road, Newbridge, Edinburgh, EH28 8LW (“the Applicant”)

Mr Kevin Chappell, Mrs Corrina Chappell, 35 Maude Close, Kirkliston, Edinburgh, EH29 9FA (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision

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

Procedural Background:

The Applicants are seeking an order for payment of rent arrears for the property. An application in terms of Rule 70 (Civil Proceedings) was received on 15 January 2018 and the sum outstanding stated as £1,174.25, based on a monthly rent of £602.94.

The Applicants lodged the Short Assured Tenancy Agreement dated 30 May 2017 and a Rent Statement dated 3 January 2018 showing as the outstanding amount the sum of £1,174.25 but charges of £619.85 per month.

The Tribunal fixed a Case Management Discussion for 9 March 2018 at 10 am at which Mr Matheson from TC Young, the Applicants’ Representative and the two Respondents attended.

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The Hearing:

The Respondents agreed that the Applicants had served on them a Notice to Quit and a Notice in terms of S 33 of the Housing (Scotland) Act 1988. There was agreement that the tenancy for the property is a Short Assured Tenancy . There was also agreement between the parties that the tenants had paid £1,000 last Wednesday but had made no further payments. The Respondents explained in detail that due to the self employment of the First Respondent the Respondents had been unable to pay the rent and assured the Tribunal that the First Respondent was expecting a Tax Rebate in April, which would allow the Respondents to pay off the arrears.

The Representative for the Applicants took instructions during two adjournment to ascertain whether this would alter the position of the Applicants. Mr Matheson advised that his instructions were to seek the original order asked for in the application.

The Legal Member asked Mr Matheson to address the issue of the calculation of the sum stated in the application as this appeared to be based on the rent and a service charge as stated in Clause 1.3 of the Tenancy Agreement rather than the rent arrears as stated in the application. He was unable to give further details regarding the service charge and confirmed that the sum should be based on the rent charges only.

Although he stated he had further information from the Appellants regarding an up to date rent statement this had not been lodged in evidence. The evidence bundle contains a rent statement dated 3 January 2018.

Findings in Fact:

1. The Applicants and the Respondents entered into a Short Assured Tenancy on 30 May 2017 with an ish at 6 December 2017.
2. In terms of the Agreement rent of £602.94 is due on each 2 day of the month.
3. The sum of rent due as per the rent statement and as of 3 January 2018 was £1,038.97 being the sum stated in the claim of £1,174.25 less the amount of 8 times the service charge of £16.91 over the period shown in the rent statement.
4. This sum was still outstanding as at the date of the hearing.

Reasons for the Decision:

The Tribunal make the decision on the basis of the written evidence lodged by the Applicants and the evidence given at the hearing by the Respondents.



There is no dispute about the facts of the case. The rent due outstanding as of 3 January 2018 is £1,038.97 based on the amounts paid as per the rental statement lodged and the rent charge of £602.94 per calendar month. There was no valid defence to the action. The financial difficulties of the Respondents and their attempts to pay off the arrears and plans to pay further towards the accrued arrears were noted but do not constitute a justification in law for non payment of rent. It is not in dispute that the sum of arrears is due to the Applicants.

Decision:

The order for payment of the sum of £1,038.97 is granted against the Respondents jointly and severally.

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Petra Hennig- McFatrige

Legal Member/Chair

Date

9 March 2018