



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/19/3911

Re: Property at 3 Stuart Avenue, Burnside, Glasgow, G73 4JL (“the Property”)

Parties:

Mr Cliff Thomas, 10 Clamps Terrace, East Kilbride, G74 2HA (“the Applicant”)

Mr Stephen Calder and Mrs Hazel Calder, 3 Stuart Avenue, Burnside, Glasgow, G73 4JL (“the Respondents”)

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondents)

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

Background

1. An application was made to 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 (“the 2017 Rules”) seeking an order for payment of the sum of £4,022.06 in relation to non-payment of rent.
2. Notice of the hearing had been served on the Respondents by sheriff officers on 7th January 2020; the Respondents had requested that that hearing be adjourned; and that postponement request had been granted. A further hearing had been assigned for 21 February 2020; a further postponement was made by the Respondents; the request related to the first Respondent’s application for bankruptcy proceedings not being concluded and seeking final figures from the landlord; the postponement request was refused; the hearing proceeded; and an order for payment granted.

3. On 26 March 2020 the First Tier Tribunal received a request from the Respondents to appeal or review the decision. The tribunal accepted the review request, and after considering the terms of that request, on 8 June 2020 it recalled the order for payment and continued consideration of the application to a further case management discussion.
4. A direction was issued by the Tribunal to the Respondents seeking written correspondence from the Accountant in Bankruptcy showing which Respondent had been sequestrated; when the sequestration had been granted; and noting the sums included in each sequestration in respect of rent arrears for the subjects, 3 Stuart Avenue, Burnside, Glasgow. On 30 June 2020 the Respondents submitted two letters from,
 - a. AMI Financial Solutions Ltd in relation to Mrs Calder's sequestration advising that they had been appointed as trustee to her estate on 13 February 2020; and that a claim had been made in her sequestration by the letting agent for the rent arrears for the sum of £5,865.94; and
 - b. Dunedin Advisory in relation to Mr Calder's sequestration, advising that Mr Calder's estate had been sequestrated on 29 April 2020; and noting that they would be contacting creditors, including the letting agents for the subjects who are owed £6700 in respect of rent arrears.
5. The further case management discussion was set down to take place today. Notification of this hearing had been made to the parties. Pamela Davren from Fineholm Lettings appeared on behalf of the Applicant. Stephen Calder appeared for himself and the second Respondent, Mrs Calder.

Hearing

6. The Applicant's agent advised that the Applicant had subjected claims for repayment of the rent arrears to the trustees for the First and Second Respondents. She advised that the Applicant was seeking repayment through the Respondents' sequestrated estates. She advised that she did not wish to withdraw the application however and asked that it be determined today.
7. Mr Calder, the First Respondent advised that as both he and his wife had now been sequestrated, any claim should be dealt with through their trustees and against their sequestrated estates.

Findings in Fact

8. The Tribunal found the following facts to be established:
9. A tenancy agreement was entered into between the Applicant and the Respondents for the Property and exists between the parties. It was entered into on 7 November 2013.

10. Clause 2 in the tenancy agreement provides that monthly rent is £750 and the rent payment date is 1st of each month. Clause 2 of the tenancy agreement provides that monthly rent is due in advance.
11. That the rental statement showed amounts due each month, amounts received, and rent outstanding.
12. That AMI Financial Solutions Ltd had been appointed as trustee in relation to the second Respondent, Mrs Calder's sequestration on 13 February 2020.
13. That AMI Financial Solutions Ltd received a claim from the Applicant against the sequestrated estate of the second Respondent for the rent arrears for the sum of £5,865.94.
14. That Dunedin Advisory had been appointed in relation to the first Respondent, Mr Calder's sequestration.
15. That Mr Calder's estate had been sequestrated on 29 April 2020.
16. That Dunedin Advisory would be contacting creditors including the Applicant's letting agents in relation to the rent arrears totalling £6700.
17. That the effect of the sequestration of both the Respondents make it incompetent for any creditor to do diligence against the Respondents or attempt to obtain payment of any debt owing at the date of sequestration.

Reasons for Decision

18. Section 16 of the Housing (Scotland) Act 2014 provides that the First Tier Tribunal has jurisdiction in relation to civil proceedings arising from assured tenancies. As this tenancy is an assured tenancy I am content that I have jurisdiction to deal with this case.
19. Each Respondent has been sequestrated and the rent arrears form part of their sequestrated estates. The second Respondent had been sequestrated prior to the hearing on the 21 February 2020. The first Respondent was sequestrated on 29 April 2020. On the date when the original order for payment was granted the total sums sought were already part of the second Respondent's sequestrated estate. Given that the Respondents have now been sequestrated, and the second Respondent had been sequestrated before the original order for payment had been granted, I consider that I require to refuse to grant the order for payment as the effect of sequestration makes it incompetent for any creditor to do diligence against a debtor or attempt to obtain payment of any debt owing at the date of sequestration.
20. On the basis of the evidence submitted and having regard to all papers submitted, I consider that I must refuse to grant the order sought.

Decision

21. I refuse to grant the order sought by the Applicant.

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.

M Barbour

Legal Member/Chair

15 July 2020