



**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/20/1140

Re: Property at 189 Netherton Road, Wishaw, ML2 0BS (“the Property”)

Parties:

**Mr Ebenezer Phillips, Mrs Eugena Phillips, 40 Phoenix Road, Lordswood,
Chatham, ME5 8TB (“the Applicant”)**

**Mr Gary Hugh Maxwell and Ms Natalie Kilmurray, 189 Netherton Road, Wishaw,
ML2 0BS and Mr Hugh Maxwell, Flat 3, 1-12 Kemp Street, Hamilton ML3 6QL
 (“the Respondent”)**

Tribunal Members:

George Clark (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £3,150. The Applicant’s request for payment of interest on this principal sum and for expenses was refused.

Background

By application, received by the Tribunal on 30 April 2020, the Applicant sought an Order for payment against the Respondent in respect of unpaid rent that had become lawfully due by the Respondent to the Applicant. The amount sought was £3,150. The Applicant also sought interest on that sum at 8% per annum and recovery of a solicitor’s fee and outlays connected with communicating with the Third named Respondent, as Guarantor for the First and Second named Respondents. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties commencing on 17 June 2019 at a rent of £450 per month and a Rent Statement showing arrears as at the date of the application of £3,150. The Applicant also provided the Tribunal with a copy of a Fee Note from Moore Macdonald solicitors, Motherwell for £50 plus VAT, with postage outlays of

£2.09 for sending a letter to the Third named Respondent as Guarantor. The Tenancy Agreement included the Third named Respondent as a Guarantor for all payments of rent and any other payments due to the Applicant which the First and Second named Respondents were required to pay under the Agreement, that liability continuing in respect of any payment due but not paid even after the termination of the Agreement.

On 2 July 2020, the Tribunal advised the parties of the date and time for a Case Management Discussion and the Respondent was invited to make written representations no later than 23 July 2020. The Respondent did not make any written representations.

Case Management Discussion

A Case Management Discussion was held by way of a telephone conference call on the morning of 5 August 2020. The Applicant, Mr and Mrs Phillips, participated in the conference call. The Respondent did not participate and was not represented. The Applicant confirmed that no rent had been paid since the date of the application and asked the Tribunal to make an Order for Payment without a Hearing.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required and that it could decide the application without a Hearing.

The Tribunal was satisfied that the sum claimed in respect of unpaid rent had become lawfully due by the Respondent to the Applicant and remained unpaid. The Tribunal refused the request for interest on this sum. The Tenancy Agreement did not contain any provision for interest to be payable on unpaid rent. The Tribunal also refused the request for reimbursement of a solicitor's bill. The Tribunal can only award expenses against a party where that party through unreasonable conduct of a case has put the other party to unnecessary or unreasonable expense. The Respondent had not engaged with the process of the proceedings at any stage, but failure to do so cannot be regarded as unreasonable conduct in the conduct of the case.

The Tribunal noted that the Third named Respondent was a Guarantor for the First and Second named Respondents and determined that the Order should be enforceable jointly and severally against all three Respondents.

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be decided without a Hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £3,150. The Applicant's request for payment of interest on this principal sum and for expenses was refused.

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.

George Clark

Legal Member/Chair

05/08/20

Date