



**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/18/1245

Re: Property at 2/1 30 Greenlaw Drive, Paisley, PA1 3RIJ ("the Property")

Parties:

Mr Leslie Gray, Farmfield House, Law Brae, West Kilbride, KA23 9BP ("the Applicant")

Ms Sarah-Jane Caldwell, 66 Oakshaw Street West, Paisley, PA1 2DE ("the Respondent")

Tribunal Member:

Jacqui Taylor (Legal Member)

**Background**

This is an application for a payment order dated 15<sup>th</sup> May 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 £1395.21 with interest thereon at the judicial rate of 8% from the date of service in relation to the Property from the Respondent, who is guarantor in terms of the lease, and provided with its application copies of the short assured tenancy agreement, copy guarantor agreement and rent arrears statement.

The short assured tenancy agreement had been correctly and validly prepared in terms of the provisions of the Housing (Scotland) Act 1988, and the tenant has already vacated the Property.

A previous Case Management Discussion was held on 1<sup>st</sup> August 2018 at Glasgow Tribunals Centre, Room 112, 20 York Street, Glasgow. The Applicant did not appear, but was represented by Miss Anna Brown, solicitor. The Respondent did not appear, nor was she represented. The Respondent had sent the Tribunal an email of 30<sup>th</sup> July

2018 which contained allegations which were broadly to the effect that the Applicant was in breach of the tenancy agreement in a number of respects to do with the condition of the property, resulting in the tenant quitting the Property early and withholding rent which was not due for that reason.

Miss Brown had advised that she did not agree with the allegations and she provided the Tribunal with papers in connection with an application to the Private Rented Housing Panel in respect of the property brought by the tenant which resulted in a Repairing Standard Enforcement Order being issued, which Order she submitted demonstrated that the only defects in the Property related to faulty radiator valves.

The Case Management Discussion was continued to 6<sup>th</sup> September 2018 in order to allow the Respondent to participate in the proceedings and to give her detailed response to the application.

### **Continued Case Management Discussion on 6<sup>th</sup> September 2018**

The Continued Case Management Discussion was held on 6<sup>th</sup> at Glasgow Tribunals Centre, Room 112, 20 York Street, Glasgow. The Applicant did not appear, but was again represented by Miss Anna Brown, solicitor. The Respondent did not appear, nor was she represented.

The Respondent had been validly served by email with the notification of the Continued Case Management Discussion, application, papers and guidance notes from the Tribunal on 13<sup>th</sup> August 2018, and I was provided with a copy of the sent email. I noted that the email had been correctly sent to the Respondents email address

[s-caldwell@bisspuxi.com](mailto:s-caldwell@bisspuxi.com) and service by email is competent in terms of Rule 6 of the Tribunal Rules.

The only representations received from the Respondent were those detailed in her email dated 30<sup>th</sup> July 2018 when she advised:

'My sister, the tenant (Sharon Caldwell) requested for a variety of repairs to be made repeatedly over a substantial period of time and was ignored.

She went to Citizens Advice who advised her on every action she took. The Paisley rep was Kevin Montgomery.

PRHP/RP/14/0147

Also involved was environmental health from Renfrewshire Council, who inspected the property as it was mouldy and this was changing colour and spreading- damaging personal property and the health of his sister, who has disabilities and her nephew who has respiratory difficulties.

My sister's lawyer is currently dealing with proceedings against this Landlord on behalf of my sister.'

In response to these representations Miss Brown advised that no proceedings have been raised against the Landlord. The complaints made to the PRHP (PRHP/RP/14/0147) have already been decided and a Completion Certificate has been issued.

She also stated that even if the Property were in the condition suggested by the Respondent she is still due to pay the rent that had not been paid by the Tenant in terms of the Guarantee dated 13<sup>th</sup> September 2013.

She advised that notwithstanding the terms of the application the Applicant is not looking for payment of interest but is looking for payment of the outstanding rent in the sum of £1395.21, in terms of the rent statement provided.

She confirmed that the Landlord does not know the exact date the Tenant vacated the Property. However she advised that the Landlord served the Tenant with Notice to Quit in June 2015 and when the letting agent inspected the Property on 31<sup>st</sup> July 2015 the Tenant had vacated. The Tenant made a rent payment of £406.16 on 6<sup>th</sup> July 2015 (being the same amount as payments made on 11<sup>th</sup> May 2016 and 8<sup>th</sup> June 2015). The Rent Statement has calculated the sums due by the Tenant to 13<sup>th</sup> July 2015 and included a credit for the period 14<sup>th</sup> -31<sup>st</sup> July 2015.

#### Decision

I determine that:-

1. In terms of the Guarantee signed by the Respondent dated 13<sup>th</sup> September 2013 the Respondent is due to 'pay on demand to the Applicant (The Landlord Under the Lease) any overdue rent or other monies lawfully due for the full term and until vacant possession is given by the Tenant to the Landlord and the Guarantee states that the Respondent agrees to make payments lawfully due even after the Tenant has yielded up possession.'
2. The Respondent has not provided any evidence that the Property was in a substandard condition. The PRHP issued a Completion Certificate in respect of the RSEO. The Respondent has not provided evidence that the Tenant had any grounds that she was entitled to withhold rent.
3. The outstanding rent due by the Tenant amounts to £1395.21, in terms of the rent statement provided.
4. I am satisfied that the sum of £1395.21 is due by the Respondent and accordingly issue an Order for Payment.

**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**

J. TAYLOR

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Legal Member 

Date: 6<sup>th</sup> September 2018