

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 2014**

Chamber Ref: FTS/HPC/CV/18/0448

Re: Property at 27 Todhill Avenue, Kilmarnock, KA3 3EQ (“the Property”)

Parties:

**Mr Malcolm Boyes and Mrs Linda Boyes care of Murphy Scoular, 22-24 John
Finnie Street, Kilmarnock, KA1 1DD (“the Applicant”)**

**Miss Karen Dunsmore, 27 Mossie Place, Kilmarnock, KA3 2BA (“the
Respondent”)**

Tribunal Members:

Lynsey MacDonald (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the order for payment sought in the Application
should be granted.**

Background

1. The Applicant sought an order for payment in respect of rent arrears for the property at 27 Todhill Avenue, Kilmarnock, KA3 3EQ. An application in terms of Rule 70 (Civil Proceedings) was received by the Tribunal on 4th April 2018 stating that the sum of £2,339.01 was outstanding, and sought that sum together with interest. The Applicant was Murphy Scoular.
2. A Case Management Discussion took place on 25th June 2018. The Tribunal raised a preliminary issue, namely that the Applicant appeared to be the Letting Agent not the Landlord, and did not appear to have right or title to sue.
3. The Tribunal fixed a further Case Management Discussion for 31st August 2018. The Respondent was invited to make written representations, and was advised that those written representations must be received by 20th August

2018. The Respondent was informed that the Tribunal could today make any decision on the application that could be made at the full Hearing, if the Tribunal had sufficient information and considered the procedure to be fair.

Further Case Management Discussion

4. The further Case Management discussion took place in the absence of the Respondent. The Respondent had not contacted the Tribunal in advance of the hearing to advise of any difficulty in attending the Case Management Discussion. The Respondent had not submitted written representations. No communication was received from the Respondent on the day of the Case Management Discussion. The Case Management Discussion was scheduled to commence at 10am. The Tribunal delayed in starting the Case Management Discussion to allow the Respondent additional time to attend.
5. The Applicant was represented by Ms Monaghan, trainee solicitor.
6. The Tribunal had been provided, in advance, with a Second Inventory of Productions for the Applicant, which included the Residential Letting Management Agreement between Murphy Scoular (hereinafter referred to as "the letting agent") and Mr & Mrs Malcolm Boyes (hereinafter referred to as "the landlords"). The second Inventory of Productions also included a letter from the landlords to the Tribunal confirming that the letting agent had permission to act in respect of all matters regarding the Application.
7. The Applicant's solicitor submitted that paragraph 16 of the Residential Letting Management Agreement provided a basis for transfer of title to sue from the landlords to the letting agent. The Tribunal was not persuaded that paragraph 16 permitted such transfer.
8. In the alternative the Applicant's solicitor moved the Tribunal to amend the Application to amend the Applicant from the letting agent to the landlords. In support of her motion she referred to the tenancy agreement, which identified the landlords as being designed care of the letting agent; she referred to the letter in the second Inventory of Productions; and she referred to the fact that communications between the letting agent and the respondent made it clear that the letting agent was acting on behalf of the landlord. The Applicant's solicitor thereafter invited the Tribunal to deal with the merits of the Application without intimation of the proposed amendment.
9. The Tribunal considered that there was no prejudice to the Respondent in today allowing amendment of the Applicant from the letting agent to the landlords. The Respondent was aware of the relationship between the landlords and the letting agent from the start of the tenancy agreement as the agency arrangement was disclosed in that agreement. Having regard to the overriding objective, the Tribunal was satisfied that it was fair to allow the amendment and made an order in terms of Rule 32 of the First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017, allowing substitution of the landlords in lieu of the letting agent as the Applicant.

10. The Tribunal then considered the merits of the Application. The rent statement showed the outstanding amount to be £2339.01 (two thousand three hundred and thirty-nine pounds and one penny). The Applicant's solicitor confirmed that there had been no contact between the letting agent and the Respondent, and in particular that there had been no payments from the Respondent in respect of the sum outstanding. The Applicant invited the Tribunal to grant an order for payment together with interest thereon.

Findings in Fact

11. The Tribunal made the following findings in fact:

- (a) The landlords and the Respondent entered into a Tenancy Agreement on 21st October 2016, with the start date for the lease also being 21st October 2016. The period of the lease was six months, and provided for monthly renewal thereafter.
- (b) The lease was managed by the letting agent.
- (c) The rent payable was £498.00 (four hundred and ninety-eight pounds) per month.
- (d) Interest would be charged at 4% per annum above the base lending rate of the Royal Bank of Scotland in respect of any overdue payment.
- (e) The letting agent was entitled to add an administration fee of £25 (twenty-five pounds) in the event of any late rent payment.
- (f) The Respondent was in arrears of rent of varying sums since 23rd November 2016.
- (g) On or around 11th August 2017, the Respondent left the property without giving the notice required in terms of the Tenancy Agreement.
- (h) On 22nd August 2017 the sum of £2339.01 was outstanding.

Reasons for Decision

12. The Tribunal proceeded on the basis of the written documents which had previously been lodged together with the oral submissions from the Applicant's solicitor.

13. In terms of the agreement between the parties the sum of £498 per month was due to be paid by the Respondent to the Applicant. In terms of the agreement between the parties, administrative fees of £25 for late payments were due to be paid by the Respondent to the letting agent in the event of late

payment. The Respondent is liable to the Applicant for the outstanding sum of £2339.01.

14. There was nothing before the Tribunal challenging or disputing any of the evidence before it.

Decision

15. The order for payment of the sum of £2339.01 together with interest thereon at the rate of 4.25% for the period 22nd August 2017 to 1st November 2017 and at the rate of 4.5% for the period from 2nd November 2017 is granted.

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.

Lynsey MacDonald

Legal Member/Chair

31/08/18
Date