

A clerical error has been noted in the surname of the Respondent: detailed in the original decision which should read 'Mr Kevin McGeachie' instead of 'Mr Kevin McGeachie'; Further, the name 'Newbery' has on occasions been spelt incorrectly in the original decision. The decision is corrected in terms of Rule 36 of the First-tier Tribunal for Scotland Housing & Property Rules of Procedure 2017. The decision with corrections is issued to the parties. The amendments will not impact on the appeal and revised timescales relating to the decision issued to parties on 1 February 2024.

[REDACTED] CHAMBER PRESIDENT
29/2/2024.

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 71 of the Private Housing (Tenancies)(Scotland) Act 2016.

Chamber Ref: FTS/HPC/CV/23/3151

Re: Property at 0/2 36 Cleveden Drive, Glasgow, G12 0RY ("the Property")

Parties:

Alexander Newbery's Testamentary Trust, Mallowdale, 9 Montgomerie Terrace, Skelmorlie, PA17 5DT ("the Applicant")

Mr Kevin McGeachie, 0/2 36 Cleveden Drive, Glasgow, G12 0RY ("the Respondent")

Tribunal Members:

Karen Kirk (Legal Member) and Ahsan Khan (Ordinary Member)

Introduction

This Hearing was a Case Management Discussion and concerned an Application for Civil Payment under Section 71 of the Private Housing (Tenancies)(Scotland) Act 2016. The purpose of the Hearing being to explore how the parties dispute may be efficiently resolved.

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Order against the Respondent for the sum of £27,885.01.

Attendance

Francesca Newbery attended for the Applicants. She is the sole beneficiary of the Applicant. Alan Burke, Property Bureau, Melville House, 70 Dryman Road, Bearsden, G61 2RH.

The Respondent was not in attendance. He had not lodged written representations. The Respondent was served by Sheriff Officer on 7th December 2023.

Preliminary Matters

The Respondent was not in attendance. Alan Burke explained that the letting agency has continued to chase the arrears by letter, visits and text messages. Francesca Newbery said she last spoke to the Respondent on 18 Oct 2023.

Francesca Newbery confirmed she had lodged an up to date rent statement to 1st January 2024 and the rent arrears due by the Respondent to the Applicant was £25,620,01. This had been sent to the Respondent. She sought to amend the sum sought in the application for rent arrears to £25,620.01. The Tribunal allowed same. She continued to seek as in the application contractual expenses of £2265.

There were no other preliminary issues raised.

Summary of Discussion

For the Applicant

The Applicant set out that she sought in terms of Part 3, Ground 12A of the Private Housing (Tenancies) (Scotland) Act 2016 an Eviction Order. She referred to the rent statements lodged. She confirmed as at the 1st January 2024 rent arrears for the property were £25,620,01. She referred to this and the fact monthly rent due by the Respondent was £1995. The Applicant explained that the Respondent stopped rental payments in December 2022. She was separately taking steps to seek an eviction order against the Respondent. The Applicant considered the Respondent had failed to engage to resolve matters.

The Applicant set out that she had also been required to obtain advice and lodged invoices for the legal expense. She referred to the application which sought the expenses and the invoices lodging comprising the sum of £2265. She referred to and relied upon the tenancy agreement and clause 37(a) which states:

“The landlord will be entitled to pursue the Tenant for any reasonable costs incurred as a result of the Tenant’s failure to pay rent on time including but not limited to any charge for returned cheques or any reasonable costs incurred in pursuing the Tenant for payment of unpaid rent. The recovery of reasonable legal costs and expenses, if determined as appropriate, could also be sought from the Tenant.”

The Applicant explained she is the sole beneficiary of the trust who own the property. It is an income trust and she has had no income from same from December 2022. There is a mortgage on the property and it is a buy to let. The Applicant as a result of matters has had to sell her own property and move in order to manage her finances. She has title and interest upon which to pursue payment. She sought an order for the sum of £27,885.01.

Reasons for Decision and Findings in Fact

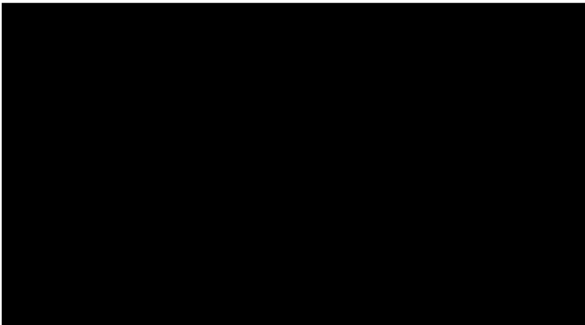
- 1. The Tribunal was satisfied that a decision could be made at the Case Management Discussion and that to do so would not be contrary to the interests of the parties having regard to the Overriding objective. The Respondent had been served by Sheriff Officer on 7th December 2023. The tribunal had before it all necessary information in order to make a decision.**
- 2. The Applicant sought an Order for Payment under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016. The Applicant has title and interest.**
- 3. As at the 1st January 2024 the Respondent’s rent arrears for the property were £25,620,01.**
- 4. Parties entered into a Private Residential Tenancy for the property on 16th April 2019. Rent per calendar month due by the Respondent to the Applicant is £1995.**
- 5. The Tribunal was satisfied that under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 the Respondent owed to the Applicant the sum in terms of rent arrears of £25,620,01.**
- 6. In terms of Clause 37(a) of the Private Residential Agreement the Applicant seeks recovery of reasonable legal costs and expenses to the amount of £2625. Said clause states *“The landlord will be entitled to pursue the Tenant for any reasonable costs incurred as a result of the Tenant’s failure to pay rent on time including but not limited to any charge for returned cheques or any reasonable costs incurred in pursuing the Tenant for payment of unpaid rent. The recovery of reasonable legal costs and expenses, if determined as appropriate, could also be sought from the Tenant.”***
- 7. The Tribunal was further satisfied that under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 the Respondent was liable under Clause 36 for said reasonable expenses in terms of the contract between the parties to the sum of £2625.**
- 8. Accordingly the Tribunal granted a Payment Order against the Respondent for the sum of £27,885.01.**

Reasons for Decision

The Tribunal found that an Order for payment for the sum of £27,885.01 was appropriate having regard to Section 71 of the 2016 Act. The Tribunal had before it the necessary rent statement, Private Residential Agreement and invoices for the Applicant's legal costs. The Tribunal was able to consider the invoices in full having regard to the contractual agreement on same between parties.

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.



Legal Member/Chair

29th January 2024

Date