

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 Housing (Scotland) Act 2014 (“the Act”)

Chamber Ref: FTS/HPC/CV/19/0569

Re: Property at Flat G/R, 98 Old Dumbarton Road, Glasgow, G3 8PZ (“the Property”)

Parties:

Mrs Christina Mary Graham Burbidge Executrix of Montague Llewellyn Burbidge, 59 Hillfoot Street, Dunoon, PA23 7DR (“the Applicant”)

Mr Victor Chugbo, Flat G/R, 98 Old Dumbarton Road, Glasgow, G3 8PZ (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Elaine Munroe (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment in the sum of £7500 should be made against the Respondent in favour of the Applicant.

Background

1. By application dated 21 February 2019 the Applicant seeks a payment order against the Respondent. A number of documents were lodged in support of the application including copy tenancy agreement, a rent statement, correspondence with the Respondent and with Halifax Building Society.
2. The application called before Legal Members of the Tribunal for case management discussions (“CMDs”) on 8 May and 20 June 2019 and for a hearing on 26 August 2019. At the hearing, a related application under chamber reference HPC/EV/19/0568 was withdrawn and the application was adjourned to a further CMD on 11 November 2019. A related application under Chamber reference HPC/EV/19/3198 (“the possession application”) also called for CMD on this date. At the CMD and following discussion with the parties both

applications were continued to a hearing on 10 January 2020 at Glasgow Tribunal Centre, 20 York Street, Glasgow. On 27 December 2019 the Respondent requested a postponement of the hearing in order to obtain legal representation. The request was opposed by the Applicant. The request was refused by the Tribunal and both parties advised that the hearing would proceed.

3. The application called before the Tribunal for a hearing on 10 January 2020. The possession application also called. The Applicant attended together with Ms McAlpine-Scott, joint Executrix of the late Mr Burbidge. They were represented by Ms McCluskey, solicitor. Mr Cooper also attended with the Applicant as supporter. The Respondent also attended.

The Hearing

4. At the start of the hearing the Respondent renewed his request for a postponement. He stated that he wanted time to obtain legal representation and had been unable to do this as a result of the Christmas holiday period. He said that there was a factual error in the note from the CMD with regard to the start of the tenancy. Ms McCluskey advised that the request was opposed. The Tribunal noted that the Applicant had been represented by a solicitor until September 2019, when the solicitor withdrew from acting. The same solicitor had represented the Respondent in relation to a previous application for possession of the property which was withdrawn by the Applicant at the hearing on 26 August 2019. Prior to the CMD on 11 November 2019, and during the discussions which took place at the CMD, the Respondent indicated that he wished to obtain legal advice. The CMD was adjourned to enable him to do so. The Tribunal was of the view that there had been sufficient time for the Respondent to take advice and instruct a new representative. Having regard to the overriding objective, and in particular the requirement to avoid delay, the Tribunal refused the request.
5. The Tribunal proceeded to discuss the applications with the parties. It was noted that the Applicant lodged an updated rent statement on 23 December 2019 which had not been circulated by the Tribunal administration. In addition, the Respondent had lodged a document a written submission immediately before the start of the hearing which had not been seen by the Applicant or the Tribunal. A short adjournment took place to provide parties with copies of all documents. Following the adjournment both parties confirmed that they had no objection to the late lodging of the documents. The Applicant confirmed that they wished to amend the application to reflect the current figure outstanding on the rent account of £7500. The Tribunal allowed the amendment.
6. The Tribunal noted that the Applicant had lodged a number of documents with the application, including a copy tenancy agreement. This is dated 1 November 2008, although there are other dates which appear to have been written on the document, possibly at a later stage. Ms McCluskey advised the Tribunal that this is the only tenancy agreement which the Applicant can locate. Mr Chugbo advised the Tribunal that he disputes that this agreement is the current one. He

referred the Tribunal to a copy letter from Glasgow City Council Tax department which he lodged on 27 December 2019. This states that Mr Chugbo was registered for Council tax at the property from 1 June 2005. Ms McCluskey responded by stating that it is not disputed that he may have occupied the property since 2005 but that the 2008 tenancy agreement is nonetheless the current written agreement and would supersede any previous agreement, if one existed. Mr Chugbo disputed this stating that he has correspondence indicating that a new agreement was to be signed in 2011 and he believes that this did take place. However, he was unable to produce a copy of the agreement or other evidence of its existence.

7. The Tribunal proceeded to hear evidence and submissions from the parties regarding the merits of the application. Ms McCluskey confirmed that she had a submission to make on behalf of the Applicant. She advised that the Respondent is currently the tenant of the property and is due to pay rent at the rate of £300 per month. The former owner and landlord of the property, Mr Burbidge, died in July 2017. In August 2017 his bank account was closed. The Respondent was notified that future payments of rent should be made to the McRoberts solicitors client account and those details were provided. She referred to letters lodged with the application dated 15 August 2017, 13 November 2017 and 5 April 2018 regarding this instruction. She also referred to a letter of 4 September 2017 which notified the Respondent that all future correspondence should be sent to McRoberts solicitors and not to Mrs Burbidge. Notwithstanding the various letters issued to the Respondent, no rent payments were received from the Respondent between September 2017 and September 2019. When the Applicant became aware of the Respondent's claim that he had continued to pay his rent by standing order into the late Mr Burbidge's account, Ms McCluskey contacted the Halifax building society. She referred the Tribunal to a letter from the Halifax dated 21 May 2019. This states that Mr Burbidge's accounts were closed in August 2017 and that any payments received thereafter from the Respondent's Royal bank of Scotland account would have been returned to the Royal Bank. Ms McCluskey then referred the Tribunal to the documents lodged by the Respondent. Firstly, a series of heavily redacted bank statements which have the Respondent's name and address on them. She pointed out that although these appear to show monthly payments of £300 to a payee "M. Burnbrige", all other entries have been redacted out so that it is impossible to see if any of these payments have been returned to the account. Secondly, she referred to an "account transaction search" dated September 2019 which the Respondent lodged in response to a direction of the Tribunal. This relates to the period 9 April 2019 to 9 September 2019. It shows 6 payments of £300 leaving the account on 9th of each month with reference "M Burnbrige". On the same date each month a payment of £300 is returned to account with the same bank code and the words "FP Return". In her submission Ms McCluskey stated that this clearly demonstrates that the payments made during this period were returned to the Respondent. It follows that any previous payments were likely also to have been returned. Certainly, they were not received by the Applicant. Lastly, Ms McCluskey referred to the copy bank statement lodged on the morning of the hearing. This is dated June 2017 and shows a payment of £300 made by the Respondent with no corresponding receipt. However, this statement pre-dates the death of Mr Burbidge, when his

account was still operation, and therefore is not relevant to the period during which the rent arrears have accrued. Ms McCluskey concluded her submission by referring the Tribunal to the updated rent statement lodged which shows that that a total of £7500 in unpaid rent is due. Three payments of £300 were received by McRoberts solicitors between October 2019 and December 2019. However, no payment to the arrears has been made and the sum of £7500 is outstanding. She confirmed that the Applicant seeks a payment order for this amount.

8. Mr Chugbo advised the Tribunal that although he has had some problems with his rent in the past, he has not missed a payment since 2012. He stated that he met with Mr Burbidge in 2011. He had received correspondence from McRoberts which included a Notice to Quit. Mr Burbidge assured him that he was taking back management of the property and said that Mr Chugbo should have no further contact with McRoberts solicitors or 1 STOP, their associated estate agency. Mr Chugbo regarded this instruction to be part of the agreement between them. It is for this reason that he continued to pay his rent to Mr Burbidge's account, rather than to McRoberts. It would have breached his agreement with his landlord to have done otherwise. When McRoberts contacted him and said that he hadn't paid his rent, he contacted his bank and was assured that his standing order was valid. In response to questions from the Tribunal, Mr Chugbo said that he did not know whether his rent payments between September 2017 and 2019 had been returned to his account. He was not aware of this happening, but his account is a busy one and he did not keep track of every transaction. He confirmed that he has not investigated to see whether he got the money back or not. He further advised the Tribunal that he went into his bank and spoke to a cashier in December 2017. He was trying to find out whether McRoberts could be preventing his standing order from being received. The cashier told him that it would be unusual, but McRoberts could have declined the payments. With regards the bank statements lodged by him, he said it was not clear from the account trace that the £300 receipts were the rent payments returning as the reference "M Burbrige" is not mentioned.

Findings in Fact

9. The Applicant is the Executrix nominate of the late Montague Llewellyn Burbidge, former owner of the property.
10. The Respondent has been the tenant of the property since 1 June 2005.
11. The Respondent and the late Mr Burbidge entered into a tenancy agreement for the property dated 1 November 2008.
12. The Respondent is due to pay rent at the rate of £300 per month for the property.
13. The Respondent has failed to pay rent for the period September 2017 until September 2019. The sum of £7500 is owned in unpaid rent.

Reasons for Decision

14. The Tribunal accepted the evidence of the Respondent that his tenancy of the subjects began before 2008. He provided evidence in the form of a letter from Council Tax which confirms that he has occupied the property since 2005. However, the Applicant argues that if there was a previous written tenancy agreement in 2005, which neither party can produce, then this was superseded by the 2008 agreement, and the Tribunal was persuaded by this argument. The Tribunal also accepted the Respondent's claim that there may have been plans to sign a new tenancy agreement in or around 2011. However, although the Respondent gave evidence that he recalled discussions with Mr Burbidge regarding a new agreement (which included a provision that all future contact regarding the property was to be with him, and not the solicitors or estate agents) neither party has been able to produce this. Ms McCluskey advised the Tribunal that an exhaustive search through paperwork has been carried out without success. Furthermore, the Respondent was unable to provide the Tribunal with any details of the alleged later agreement or any evidence that this was in fact signed. The Tribunal therefore concludes that 2008 agreement is the current tenancy agreement for the property for the purposes of the application.
15. The Tribunal notes that the 2008 agreement stipulates rent to be £270 per calendar month, not £300 as is claimed in the applications before the Tribunal. However, the rent charge of £300 is not disputed by the Respondent. Indeed, this is what he claims was paid by him. It therefore appears that at some point since 2008, the rent specified in that agreement has been increased and that the rent due for the relevant period was £300 per month.
16. The Tribunal notes that the Respondent does not dispute that between September 2017 and September 2019 he did not pay his rent into the account nominated by McRoberts solicitors who were instructed to deal with the estate of the late Mr Burbidge. What is argued by him is that he continued to pay his rent every month by standing order to account of the late Mr Burbidge. The Applicant's position is that they did not receive these sums because the account was closed, and any monies received would have been returned to the Respondent.
17. The Applicant relied on a number of documents in support of their claim. Letters to the Respondent dated 15 August and 13 November 2017 clearly informed the Respondent that he required to pay his rent to McRoberts client account, and those details were provided. The November letter also advised him that they had not received rent payments since the previous letter. A letter of 4 April 2018 again informed him that he had not paid his rent that that this was still outstanding. The Tribunal is therefore satisfied that the Respondent was made aware that no payment of rent had been received. The Applicant also relied on a letter from the Halifax dated 21 May 2019 which states that the account of the late Mr Burbidge was closed in August 2017 and that any payments made to this account by the Respondent thereafter would have been returned to the

Royal Bank of Scotland.

18. The Respondent sought to persuade the Tribunal, firstly, that he had made all payments of rent due and secondly, that he had been entitled to continue to pay to the late Mr Burbidge's account because of an agreement between them that he was to have no further dealings with McRoberts. The Tribunal was not so persuaded. Even if such an agreement had been reached, this could not have continued following the death of Mr Burbidge. McRoberts were not only the solicitors appointed by the Executrix, but one of their solicitors was jointly appointed as Executor. The Respondent does not dispute that prior to October 2019 he made no payments to their client account. His sole argument is that he spoke on several occasions to his own bank who confirmed that his standing order was valid. Heavily redacted bank statements for the period show the payments leaving his account. The Tribunal is not persuaded by the Respondent's evidence and submission on the matter. No correspondence from his bank had been produced which supports his claim that payments were made from his account and not returned to it. The account trace document he himself obtained and lodged shows that for a 6 month period from April to September 2019 payments of £300 were in fact paid out but were returned to the account on the same day. The Tribunal is of the view that this clearly supports the Applicant's argument that if payments were made, they were returned and not received by the Applicant. The Tribunal also noted a discrepancy between the bank documents lodged by the Respondent. A statement from June 2017, before the death of Mr Burbidge, shows a payment of £300 to "M Burbidge". The redacted statements and transaction search state "M Burnbrige", an incorrect spelling. It appears that at some point the Respondent has changed the payee reference to a different and incorrect spelling. It is also significant that the Respondent advised the Tribunal that he does not know whether the rent payments for the two-year period came back into his bank account or not. He had not checked and, as there are a lot of transactions on his account, he had not noticed whether this had occurred.
19. The Tribunal concludes that the Respondent has failed to pay rent in the sum of £7500. The Tribunal accepts the Respondent's evidence that until September 2019 he had a standing order for £300 for his rent set up. However, the payee was deceased, the account closed, and the Respondent was aware that he was supposed to pay his rent to McRoberts solicitors.
20. As the Tribunal concluded that the Respondent has failed to make payments of rent in the sum of £7500 and that an order for payment for this amount should be made in favour of the Applicant.

Decision

21. The Tribunal determined that an order for payment should be granted in favour of the Applicant for the sum of £7500.

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.

Josephine Bonnar, Legal Member/Chair

10 January 2020