

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/18/2129

Re: Property at Flat 2/2, 69 Birchfield Drive, Scotstoun, Glasgow, G14 9AS ("the Property")

Parties:

Mr Robert Black, Mrs Jean Black, 8 Fifth Avenue, Anniesland, Glasgow, G12 0AT ("the Applicants")

Ms Eilidh Aird, Nurses Cottage, Lower Shader, Isle of Lewis, HS2 0RH ("the Respondent")

Tribunal Members:

Lesley Ward (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the respondent shall make payment to the applicants of the sum of four thousand five hundred pounds (£4500).

This was the first calling of a case management discussion in connection with an application in terms of rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, 'the rules' and s16 of the Housing (Scotland) Act 2014, 'the Act' to claim for rent arrears and other losses regarding the property at Flat 2/2 69 Birchfield Drive Scotstoun Glasgow G14 9AS 'the property'. The application was made on 15 August 2018. A first CMD scheduled for 4 February 2019 was postponed due to difficulties in effecting service on the respondent. The tribunal had before it the following copy documents:

1. Application dated 13 August 2018 and received by the Tribunal on 15 August 2018.
2. Tenancy agreement dated 14 April 2013.
3. Exchange of text messages between Mrs Black and respondent around January 2018

L. Ward 

4. Photographs.
5. Bank statements.
6. Document entitled "Breakdown of bill to reinstate flat 2/2 69 Birchfield Drive G13 at end of Eilidh Aird's tenancy".
7. Emails from Mrs Black to respondent dated 24, 30 April 2018 and 11 June 2018.
8. Email from respondent to Tribunal administration dated 25 and 28 February 2019.
9. Royal Mail track and trace documentation dated 26 February 2019.

The CMD took place via conference call. The applicants participated in the CMD. The respondent did not attend and was not represented.

Preliminary matters.

1. The tribunal noted that the tribunal attempted to send the papers to the respondent by royal mail track and trace. The tribunal had sight of documentation signed for by "EAird" on 26 February 2019. The documentation was also sent to the respondent by email on 22 February 2019 and the respondent contacted the Tribunal from the same email address on 25 and 28 February 2019. She stated that she does not reside at the address in the application and did not receive the hard copy papers. She had clearly received the email with the application and CMD notification. Her email of 25 February 2019 stated "I just seen this email at the weekend and had not seen any of the enclosed documents before. I have never lived at the address which I notice you had been sending these documents to". The track and trace documents were subsequently received back by the Tribunal administration with the message "gone away" and "not called for". The tribunal carefully considered the terms of rule 24 and the requirements for fair notice. It did appear that the address given for the respondent was not her current address. Nevertheless it also appeared that the respondent had received her papers by email on 22 February 2019 was aware of today's CMD. The tribunal proceeded with the CMD in terms of rule 29 in the absence of the respondent on the material before it.
2. The tribunal noted that the copy tenancy agreement lodged related to the respondent and a second tenant. The applicant's stated that the second tenant left the property in 2014 and a new lease was drawn up with the respondent as the sole tenant as stated in the application. They also stated that the terms of the lease were substantially the same but it was agreed that the rent would be reduced to £500 at the respondent's request.
3. The applicants confirmed that they are the joint owners of the property.

Discussion

The tribunal sought to clarify the terms of the rent statement with the applicants and how the entries in the rent statement tied in with the copy bank statements lodged. Mrs Black explained that the respondent paid her rent regularly for several years.

She pointed to the rent statement in and explained that from July 2016 onwards the respondent got later and later in paying her monthly rent. She made reference to the bank statements and explained that the payment made on 9 October 2017 was allocated to the outstanding rent for July 2017 and the January 2018 payment was allocated to the August 2017 rent. Rent arrears accrued from September 2017 until the respondent left the property in May 2018. There are 9 months outstanding at £500 per month totalling £4500.

Turning to the further sums sought, Mr Black made reference to item 6 above and stated that they were seeking the sum of £2110, being the sum of £1645 and £465. Mrs Black's position was that the applicants' own a company and the work was done by that company as set out in that document. The tribunal sought receipts or invoices regarding the various entries. The applications were unable to produce these at this stage. The tribunal was prepared to adjourn consideration of the CMD and make directions. The applicants decided to withdraw this aspect of their claim and consider making a new application at a later date.

Findings in fact

1. The applicants are the owners of the property.
2. The respondent entered into a tenancy agreement with the applicants for the let of the property around March 2014.
3. The agreed rent was £500 per month.
4. Rent arrears accrued between September 2017 and May 2018 in the sum of £4500.
5. This sum remains outstanding.

Reasons

The tribunal gave careful consideration to the heads of claim and the documents lodged. The tribunal also gave careful consideration to the requirements of rule 24 regarding notice on the respondent. The tribunal was satisfied that it had enough information to make a decision and the procedure has been fair. The applicants have produced bank statements and a rent statement and text messages regarding the arrears. The tribunal accordingly granted an order for the sum of £4500.

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.

L. Ward

15 March 2019

Lesley A Ward Legal Member

Date