

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/19/2299

Re: Property at 25 Larch Place, East Kilbride, G75 9HQ ("the Property")

Parties:

Mr John Douglas Lamont, Mr Graham Smart, 82 Alexander Avenue, Eaglesham, G76 0DW; 18 Burnside Gardens, Clarkston, Glasgow, G76 7QS ("the Applicants")

Ms Kirsty Macdonald, 25 Larch Place, East Kilbride, G75 9HQ ("the Respondent")

Tribunal Members:

Sarah O'Neill (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment by the respondent of the sum of £2730 should be granted in favour of the applicants.

1. An application dated 19 July 2019 was received for a payment order brought in terms of rule 70 (Application for civil proceedings in relation to an assured tenancy under the Housing (Scotland) Act 1988) of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ("the 2017 rules").
2. The applicant was seeking payment of rent arrears of £2730 from the respondent in relation to the property, being the amount of arrears outstanding as at the date of the application.
3. The application included a copy of the tenancy agreement between the parties.

4. Notice of the case management discussion, together with the application papers and guidance notes, was served on the respondent by sheriff officer on behalf of the tribunal on 13 September 2019. The respondent was invited to make written representations by 4 October 2019. No written representations were received by that date.
5. The tribunal issued a direction dated 4 October to the applicants on 7 October 2019, requiring them to provide by 14 October 2019: 1) a copy of the rent statement, showing the outstanding rent due by the respondent; and 2) copies of any letters or notices sent to the respondent regarding the outstanding rent arrears sought. No response to the direction was received.

The Case Management Discussion

6. A case management discussion (CMD) was held on 21 October 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. One of the applicants, Mr Graham Smart, was present and was represented by Mr David Hutchison, solicitor, Dallas McMillan solicitors. The respondent was not present or represented at the CMD.
7. While it appeared from the evidence that the respondent may have now left the property, Mr Smart told the tribunal that the applicants were also pursuing an eviction action against the respondent. He said that a neighbour had suggested that some of the respondent's belongings were still in the property. The tribunal also had regard to the certificate of service by Walker Love sheriff officers dated 13 September 2019, stating that the papers had been lawfully served on the respondent.
8. The tribunal was therefore satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a CMD had been duly complied with. The tribunal delayed the start of the CMD by 10 minutes, in case the respondent had been detained. She did not appear, however, and no telephone calls or messages had been received from her. The tribunal therefore proceeded with the CMD in the absence of the respondent.
9. Mr Hutchison asked the tribunal to grant an order for £2730, being the sum sought in the original application. He indicated that payment of any further rent arrears due after July 2019 would be sought in a separate application alongside the eviction application.
10. He apologised for the fact that a response had not been sent to the tribunal's direction due to his absence on annual leave. The tribunal chairperson acknowledged that the timescale for compliance had been relatively short.
11. Mr Hutchison provided the tribunal with a rent statement showing the outstanding rent due by the respondent as at July 2019 to be £2730. This sum was comprised of seven monthly payments of £390 each which had not been paid for the months from January to July 2019. He told the tribunal that a

formal rent statement had not been sent to the respondent. He produced a transcript of WhatsApp messages between the respondent and Mr Douglas Lamont, the other applicant, dated between 1 March and 5 July 2019. It was clear from these that, although no specific figures were quoted, the respondent was aware that she owed rent arrears. She had also stated several times that she would make payments towards the arrears, but it appeared that she had not done so.

12. Mr Smart told the tribunal that no further payments had been made, and that there had been no further correspondence with the respondent after 5 July 2019. He confirmed that the payment for July would have been due on 3 July 2019, in terms of the tenancy agreement. He also told the tribunal that WhatsApp was the only method of communication which the respondent had engaged in with the applicants.

Findings in Fact

13. The tribunal made the following findings in fact:

- The applicants are the joint owners of the property as from 25 July 2017. Prior to that date, there was a third co-owner, Mr Cameron Forsyth, who was also named as a landlord on the tenancy agreement.
- There was a valid short assured tenancy in place between the parties, which had commenced on 3 July 2014.
- The rent payable under the tenancy agreement was £390 per month, payable in advance on the 3rd of each month.
- As at the date of the application, the respondent owed the applicant the sum of £2730 in rental payments.

Reasons for Decision

14. Having considered all of the evidence before it, the tribunal was satisfied that an outstanding balance of rent arrears was due as at the date of the application in the sum of £2730.
15. The tribunal noted that the tenancy agreement provided for a tenancy deposit of £390 to be paid by the respondent to the applicants at the start of the tenancy. Given that it appeared the respondent may still be living in the property, the tribunal did not take this into account. The tribunal chairperson but pointed out however that any future tribunal may take this into account in considering an application for payment of any further rent arrears.
16. The tribunal therefore decided to make an order for payment by the respondent to the applicants of the sum sought. As no time to pay application had been received from the respondent, this order was made for payment of the entire sum due.

Decision

The tribunal grants an order for payment by the respondent to the applicants for the sum of £2730.

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.

Sarah O'Neill

Legal Member/Chair

21/10/19

Date