



**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/19/2411

**Re: Property at 1 Cawderview, Carrickstone, Cumbernauld, G68 0BN (“the
Property”)**

Parties:

**Mr Russell McAdam, c/o Clyde Property Ltd, 8 Busby Road, Clarkston, G76
7XL (“the Applicant”)**

Mr Marc McCann, Whereabouts unknown (“the Respondent”)

Tribunal Members:

Ms 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 £2385 with interest thereon at the rate of nine per cent (9%) per annum
running from the date of this decision until payment should be granted in
favour of the applicant.**

Background

- 1. An application was received on 1 August 2019 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 £3180 from the
respondent in relation to the property, being the amount of arrears
outstanding as at the date of the application, with interest at the rate of 8% per
annum from the date of the application until payment.**

3. The application included a copy of the tenancy agreement and form AT5; a copy of correspondence exchanged between the applicant's letting agents and the respondent relating to rent arrears; a copy of a rent statement; and the applicant's bank statement.
4. The tribunal instructed sheriff officers to serve notice of a case management discussion (CMD) scheduled for 26 September 2019, together with the application papers and guidance notes, on the respondent at the property address. The sheriff officers were unable to serve the papers on the respondent at that address on 26 August 2019, and were advised by a neighbour that the respondent had left the property about two weeks previously. The CMD was therefore cancelled, and a new CMD arranged for 29 October 2019.
5. The papers for the rescheduled CMD were served by advertisement on the First-Tier Tribunal Housing and Property Chamber website between 25 September and 29 October 2019.
6. No written representations or time to pay application were received from the respondent prior to the CMD.

The Case Management Discussion

7. A case management discussion was held on 29 October 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The applicant was represented by Miss Lauren Dalgleish, trainee solicitor at Clarity Simplicity Ltd, who gave evidence on his behalf. The respondent was not present or represented.
8. The tribunal was 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 case management discussion had been duly complied with. The tribunal had before it a certificate of advertisement stating that service by advertisement on the respondent was carried out on the First-Tier Tribunal Housing and Property Chamber website between 25 September and 29 October 2019. The tribunal was satisfied that the respondent had been cited to attend the CMD by advertisement in terms of rule 6A of the 2017 rules, and had therefore been given lawful notice of the proceedings.
9. The tribunal delayed the start of the discussion by 10 minutes, in case the respondent had been detained. He did not appear, however, and no telephone calls or messages had been received from him. The tribunal therefore proceeded with the CMD in the absence of the respondent.
10. Miss Dalgleish told the tribunal that the respondent had left the property in mid-August. She confirmed that no further payments had been made towards the outstanding rent arrears since the application was made. The outstanding

sum sought remained the same as that in the application, comprising four months' rent which had been payable in April, May, June and July 2019.

11. The tribunal chairperson asked Miss Dalglish whether she could provide any evidence that the respondent had been sent notification of the outstanding sum claimed. She noted that there was a copy of an email from Clyde Property, the applicant's letting agent, dated 10 June 2019 addressed to the respondent stating that there was a balance due of £1590, but that there seemed to be no further evidence regarding the remainder of the outstanding sum.
12. Miss Dalglish said that there was no further correspondence to evidence this. She pointed to a rent statement which was submitted with the application, which had been provided by the applicant's previous letting agent. This showed that the rent had been paid up until the end of March 2019. She said that the applicant had at that point moved to a new letting agent, Clyde Property, and the respondent had paid no further rent after they took over. She also pointed to a bank statement in the name of the applicant and his wife, Mrs Donna McAdam, which showed that no rental payments had been paid in since April 2019.
13. The tribunal chairperson noted that there was provision in paragraph 9 of the tenancy agreement for a deposit of £795 to be paid by the respondent to the applicant. She asked what had happened to the deposit money at the end of the tenancy. Miss Dalglish was unsure about this, and the tribunal granted a short adjournment to allow her to call the applicant's letting agent. Following that call, she advised the tribunal that the deposit had been lodged with SafeDeposits Scotland, and that an application had been submitted by the applicant claiming the money in respect of rent arrears on 23 September 2019. The outcome of that claim was not yet known.
14. Miss Dalglish asked the tribunal to grant an order against the respondent in favour of the applicant for £3180, together with interest at 9% as set out in the tenancy agreement.

Findings in Fact

15. The tribunal made the following findings in fact:
 - The tribunal was satisfied that there was a short assured tenancy in place between the parties.
 - The applicant and his wife, Mrs Donna McAdam, were the joint landlords in terms of the tenancy agreement between the parties dated 21 April 2017 and commencing on 28 April 2017. The title deed for the property showed that the applicant and Mrs McAdam own the property jointly. A mandate dated 25 July

2019 signed by Mrs McAdam was before the tribunal, confirming that she consented to and authorised the current application in the applicant's name.

- The rent due under the tenancy agreement was £795 per calendar month payable in advance on the 28th of each month.
- The respondent paid a tenancy deposit of £795 to the applicant at the start of the tenancy.
- The respondent had made no rental payments since March 2019, and as at the end of July 2019, he owed the applicant the sum of £3180 in rental payments.

Reasons for Decision

- 16.** Having considered all the evidence before it, the tribunal decided to make an order for payment by the respondent to the applicant of the sum of £2385. While the tribunal was not entirely satisfied that the respondent had been notified of the entire sum due, it considered that on the balance of probabilities, he was aware of the sum owed in rent arrears.
- 17.** While the outcome of the applicant's application to the tenancy deposit scheme was unknown, it appeared to the tribunal that it was highly likely in the circumstances that the entire deposit sum would be awarded to the applicant. Miss Dalgleish indicated that she agreed with that assessment, and did not wish to further delay proceedings to await the outcome of the tenancy deposit scheme application. The tribunal therefore deducted the £795 deposit sum from the outstanding arrears of £3180, leaving a balance of £2385.
- 18.** The tribunal also considered the applicant's request for interest of 9% per annum to be added to the sum payable from the date of application until payment. The tribunal noted that paragraph 1 of the tenancy agreement clearly stated that interest on overdue rent was to be paid at the rate of 9% per annum from the due date of payment until paid. In terms of rule 41A of the 2017 rules, the tribunal may include interest when making an order for payment. Any such interest is to be at the rate either a) stated in the relevant tenancy agreement or b) ordered by the tribunal, and runs from the date of the tribunal's decision.
- 19.** The tribunal decided to grant the order with interest at the contractual rate set out in the tenancy agreement, from the date of this decision.

Decision

The tribunal grants an order for payment by the respondent to the applicant for the sum of £2385 with interest thereon at the rate of nine per cent (9%) per annum running from the date of this decision until payment.

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

29/10/2019

Date