



**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/18/0686

**Re: Property at Flat 7, 56 Milnpark Gardens, Glasgow, G41 1DP (“the
Property”)**

Parties:

Michael Lynch, 4 Shandwick Place, Inverkip, PA16 0GD (“the Applicant”)

**Miss Hayley Smith, Flat 7, 56 Milnpark Gardens, Glasgow, G41 1DP (“the
Respondent”)**

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that**

Background

An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 70 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“2017 Rules”) seeking an order for repayment of rent arrears in relation to an assured tenancy under the Housing (Scotland) Act 1988 by the Applicant against the Respondent in relation to the subjects Flat 7, 56 Milnpark Gardens, Glasgow.

The application contained a copy tenancy agreement; emails to the respondent requesting payment of the rent arrears and copy rental statement.

The applicant, Michael Lynch appeared together with his representative Mr Jwad Hanif, of Messrs Miller Becket Jackson. There was no appearance from the respondent.

Notice of the Case Management Discussion, together with confirmation that the respondent could make written representation on the application on or before 14 May 2018, had been served by sheriff officers on the respondent on 23 April 2018.

No representations had been received from the respondent.

I was satisfied that the respondent had received notice of the Case Management Discussion. Accordingly, I was prepared to proceed in the absence of the respondent.

Case Management Discussion

No preliminary motions were made.

The applicant's representative submitted that that he was seeking an order for payment of the rent arrears.

I was referred to the schedule showing rent amounting to £2860.91 as at 1 March 2018.

He advised that the rent arrears had been continuing to accrue and there was now in the region of £3691.91 rent arrears outstanding and owing. There have been a number of emails to the respondent to try and obtain repayment. The letting agents had also tried to call and visit the respondent to address the outstanding arrears. There had been no contact from the respondent to these attempts at contact.

I sought clarification as to "what additional costs" as referred to in the application were sought. The applicant's representative advised that he had advised the applicant that expenses were not usually granted in tribunal cases, and different rules applied in the sheriff court, and expenses may not be available in this case.

Findings in Fact

I have found the following facts established:-

A tenancy agreement existed between the applicant and the respondent for the property. Clause 2 provides that the tenancy promises to pay rent on the day it becomes due. Clause 1.6 provided that rent was £430 per calendar month in advance.

The rental transaction statements show rent arrears due at 1 March 2018 being £2860.91. Attempts had been made to contact the respondent to address the arrears.

It appears to me therefore on the basis of the evidence before me that rental payments had not been made and the arrears existed.

There was no written or verbal representation received from the respondent in disputing any of the points or providing any other relevant information.

Reasons for Decision

Section 16 of the Housing (Scotland) Act 2014 provides that

Regulated and assured tenancies etc.

(1)The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal—

(a)a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984

(b)a Part VII contract (within the meaning of section 63 of that Act),

(c)an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988

(2)But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3)Part 1 of schedule 1 makes minor and consequential amendments.

The Tribunal now has jurisdiction in relation to claims by a landlord for payment of unpaid rental against a tenant under an assured tenancy.

On the basis of the evidence before me, I have found that an assured tenancy existed. I consider that rent was due to the applicant by the respondent. I consider that the rent statement provides evidence of the arrears and I consider that the copy emails provide evidence of attempts to get the respondent to repay these arrears. I note that the applicant advised that the arrears are still outstanding as at today's date.

I do not consider that I am entitled to grant an award of expenses in this case as I do consider that the terms of rule 40 are met in relation to the conduct of the respondent in this case. Accordingly I do not award expenses to the applicant.

In terms of Rule 17 of the 2017 Rules I am entitled to do anything at a case management discussion which I may do at a hearing, including making a decision.

Decision

I grant an order for payment of £2860.91 in favour of the applicant against the respondent.

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.

M Barbour

Légal Member/Chair

Date

21.5.2018