

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)**

Chamber Ref: FTS/HPC/CV/18/2104

Re: Property at 45/12 Westfield Avenue, Edinburgh, EH11 2TN (“the Property”)

Parties:

Lowther Homes Limited, 25 Cochrane Street, Glasgow, G1 1HL (“the Applicant”)

Mr Thomas Murray, 45/12 Westfield Avenue, Edinburgh, EH11 2TN (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member)

Representation:

Applicant: Represented by Miss H Swanson, Messrs T. C. Young, Solicitors, Edinburgh

Respondent: Not represented

Decision (in absence of the Respondent)

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

BACKGROUND

1. On 6 July 2015 a tenancy agreement in relation to the Property was entered in to by Dunedin Canmore Enterprise Ltd and the Respondent. A notice in terms of s32 of the Housing (Scotland) Act 1988 (“the 1988 Act”) – commonly referred to as a form AT5 - had been served upon the Respondent prior to execution of the agreement. The Tenancy was, accordingly, as short assured tenancy in terms of the 1988 Act;
2. The landlord’s rights in relation to the Property were subsequently transferred to Dunedin Canmore Housing Ltd on 30 March 2017. On the same day, an agreement was entered in to between Dunedin Canmore Housing Ltd and the Applicant in terms of which the Applicant assumed the role and responsibilities of landlord in relation to the Property;
3. The rent was originally £493.84 per calendar month. The tenancy agreement made provision for rent reviews. The rent was subsequently increased to

£500 per calendar month and thereafter, with effect from 1st May 2018, to £520 per calendar month;

4. As at the date of the application to the Tribunal (10 August 2018) the arrears of rent amounted to £1,778.05. A Case Management Discussion was held on 15th November 2018. On that date the case was continued until 4th January 2019 as the Respondent had agreed to make payments towards the rent and arrears at the rate of £300.00 per week. In the event that these payments were maintained it was likely that the Applicant would withdraw the application for a payment order;
5. The payments were not maintained. As at 4th January 2019 the amount due had reduced but remained at £778.05. The Applicant sought an order for payment in that amount;

THE HEARING/CASE MANAGEMENT DISCUSSION

6. The Applicant was legally represented at the Case Management Discussion. The Respondent did not attend and was not represented;
7. The Applicant's representative provided an updated rent statement showing the balance due as at 1st January 2019 to be £778.05 and sought an order for payment in that amount;
8. Prior to granting that order, the Tribunal sought confirmation that the Applicant was not a Registered Social Landlord (RSL) in terms of the Housing Scotland Act 2010. If the Applicant is an RSL the Tribunal does not have jurisdiction to grant an order. Dunedin Canmore Enterprise Ltd is not an RSL. Dunedin Canmore Housing Ltd is an RSL. Lowther Homes Ltd is not an RSL. All three companies, however, are part of Wheatley Housing Group Ltd. Wheatley Housing Group Ltd is an RSL. It was confirmed that, while Wheatley Housing Group Ltd is an RSL that relates to only part of its activities. It has other subsidiaries and activities which are not RSL's. Lowther Homes Ltd is part of Wheatley Housing Group Ltd but is not an RSL. On that basis, the Tribunal considered that it did have jurisdiction to grant the order sought and proceeded to do so.

FINDINGS IN FACT

9. On 6 July 2015 a tenancy agreement in relation to the Property was entered in to by Dunedin Canmore Enterprise Ltd and the Respondent.
10. The landlord's rights in relation to the Property were subsequently transferred to Dunedin Canmore Housing Ltd on 30 March 2017. On the same day, an agreement was entered in to between Dunedin Canmore Housing Ltd and the Applicant in terms of which the Applicant assumed the role and responsibilities of landlord in relation to the Property;
11. The rent was originally £493.84 per calendar month. The tenancy agreement made provision for rent reviews. The rent was subsequently increased to £500 per calendar month and thereafter, with effect from 1st May 2018, to £520 per calendar month;
12. As at 4th January 2019 the amount due by the Respondent to the Applicant amounted to not less than £778.05.

DECISION

The Tribunal granted an order against the Respondent for payment of the sum of SVEN HUNDRED AND SEVENTY EIGHT POUNDS AND FIVE PENCE (£778.05) STERLING to the Applicant:

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.

V Crawford

4 January 2019

Legal Member/Chair

Date