

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 the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) and Rule 70 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules)

Chamber Ref: FTS/HPC/CV/19/0425

Re: Property at 18 Crewe Terrace, Edinburgh, EH5 2JU (“the Property”)

Parties:

MacTaggart & Mickel Homes Limited (formerly Mactaggart & Mickel Limited, conform to Certificate of Incorporation of Change of Name dated 1 April 2010), a company incorporated under the Companies Acts (Registered number SCO13539) and having its Registered Office formerly at 65 Bath Street, Glasgow and now at 1 Atlantic Quay, 1 Robertson Street, Glasgow, G2 8JB (“the Applicant”)

DJ Alexander Letting Limited, 1 Wemyss Place, Edinburgh, EH3 6DH (“the Applicant’s Representative”)

Mr Scott Campbell and Mr Craig Ian Chancey, current whereabouts unknown, formerly residing at 6/7 Ferry Gait Place, Edinburgh, EH4 4GN and 18 Crewe Terrace, Edinburgh, EH5 2JU (“the Respondents”)

Tribunal Members:

Susanne L. M. Tanner Q.C. (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent should pay the Applicant the sum of ONE THOUSAND ONE HUNDRED AND FORTY FOUR POUNDS (£1144.00) STERLING; and made an Order for Payment in respect of the said sum; with interest from the date of the decision on 8 May 2019 until payment at the rate of 4.75 per cent per year.

STATEMENT OF REASONS

1. Procedural Background

- 1.1. The Applicants made an Application to the tribunal on 7 February 2019 in terms of Section 16 of the 2014 Act and Rule 70 of the 2017 Rules, seeking an order for payment against the Respondent in the sum of £1247.76 in respect of rent arrears of £1250; cleaning of £209 and utility meter debt of £38.76, less £250 returned from Safe Deposits Scotland; together with interest at the rate of four per cent over the Bank of England base rate in terms of Clause 8.2 of the tenancy agreement.
- 1.2. The documentation with the Application comprised:
 - 1.2.1. Copy Short Assured Tenancy Agreement between the Applicant and the Respondents dated 23 May 2013; with AT5 form dated 23 May 2013.
 - 1.2.2. Statement of arrears dated 7 February 2019;
 - 1.2.3. Checkout Report dated 16 August 2018;
 - 1.2.4. Letter of authority authorising Applicant's Representative to act on behalf of Respondent.
- 1.3. The Application and documentation submitted with it was considered by the legal member of the tribunal with delegated powers of the Chamber President.
- 1.4. The tribunal requested that the Applicant's representative provide title of the Applicant to the Property. The Applicant's representative provided a copy Disposition by the Applicant to another party dated 14 September 2018, selling the Property to that other party.
- 1.5. On 21 February 2019, the Application was accepted for determination by the tribunal.
- 1.6. A Case Management Discussion ("CMD") was fixed for 10 April 2019 and the tribunal attempted to notify parties of the date, time and place of the CMD by letters dated 19 March 2019. However, the tribunal was unable to effect service on the Respondents at the address provided by the Applicant's Representative. The CMD was cancelled.
- 1.7. A New CMD was fixed for 8 May 2019. Between 4 April 2019 and 7 May 2019 the Respondent was notified of the date, time and place of the CMD in terms of Rule 6A of the 2017 Rules, by advertising the same on the tribunal's website. A Certificate of Service dated 7 May 2019 confirms the said service.

- 1.8. The Respondents did not submit any written representations or documents in advance of the hearing.
- 1.9. The tribunal issued Directions dated 18 April 2019 requiring the Applicant or its Representative to produce further information in advance of the CMD.
- 1.10. On 23 April 2019 the Applicant's Representative submitted the following additional information in response to the Direction:
- 1.10.1. Statement from Safe Deposits Scotland dated 23 October 2018;
 - 1.10.2. Rent statement dated 23 October 2018;
 - 1.10.3. Invoice from Bluestone cleaners dated 18 September 2018.
 - 1.10.4. Feu Charter in favour of the Respondents.
- 1.11. The information submitted was uploaded to the tribunal's case management system and would have been sent to the Respondents with the Application documentation had they made any contact with the tribunal's administration in response to service by advertisement. The Respondents did not make any contact with the tribunal's administration prior to the CMD on 8 May 2019.

2. CMD: 8 May 2019 at 1000h at George House, 126 George Street, Edinburgh

- 2.1. Mr David Gibb and Ms Gill Cartwright, from the Applicant's Representative attended the CMD.
- 2.2. The Respondents did not attend the CMD and made no contact with the tribunal's administration or venue. The tribunal waited until 10.10h and started the CMD in the absence of the Respondents. The tribunal was satisfied on the basis of a certificate of service by advertisement dated 7 May 2019 that the requirements of Rule 24(1) of the 2017 Rules regarding the giving of notice of a hearing had been duly complied with and proceeded with the Application upon the representations of the Applicant's Representative and all the material before it, in terms of Rule 29 of the 2017 Rules.
- 2.3. Ms Cartwright referred to the Application which seeks a payment order for £1247.76, plus interest at 4% above the Bank of England Base rate (0.75%) until payment, in terms of Clause 8.2 of the Short Assured Tenancy agreement dated 23 May 2013. The sum being sought comprises: rent of £1250 for the period 23 June 2018 to 22 August 2018 (two months' rent); cleaning charges £209; utility meter debt £38.76; less £250 recovered from Safe Deposits Scotland (the entire deposit held).
- 2.4. Miss Cartwright confirmed that they were not insisting on the utility meter debt as they did not have any original invoice and the amount on the

Bluestone cleaner's invoice for electricity top up was shown as £30. The amended sum sought was the reduced sum of £1144, in respect of rent arrears of £1250 and cleaning charges of £144, less the £250 recovered via the deposit protection scheme; plus interest at the contractual rate of 4.75% in terms of the tenancy agreement and the current Bank of England Base rate.

- 2.5. The Applicant's Representative explained that the rent statement dated 23 October 2018 which was produced in response to the Direction reflects that £250 was recovered from Safe Deposits Scotland. Miss Cartwright explained that they have had discussions with Safe Deposits Scotland as the deposit protection company's system is not user friendly when the amount due exceeds the deposit held, which was the position in this case. They were unable to put the full rental arrears figure in this case as it exceeded £250 so they simply put it in the notes section next to other. However, the deposit protection company statement clearly shows that the entire deposit of £250 was returned to the Applicant.
- 2.6. Ms Cartwright provided a copy of a recorded delivery letter to the Respondents dated 27 November and it was signed for on 1 December. She submitted that they have always been aware that there is an outstanding balance that the Applicant's Representative was going to pursue. They gave them until 17 December 2018 to contact them and to seek independent legal advice. They did not hear from them and then the Application was made. At that time they had a forwarding address which is the one they provided to the tribunal. A tracing agent found them there.
- 2.7. Ms Cartwright explained that the tenants left the Property on 8 September. There had been some prior discussion during which the Tenants claimed that they had given formal written notice of one month as per the tenancy agreement but could not provide any evidence. They needed to give one month's notice. The respondents claimed that they had served notice in May to end the tenancy in June and they said that they had paid to 22 June 2018. By the time the Agents managed to get contact with them it was 8 August. The property team could not get hold of them prior to that. The Respondents were not responding to any communications. The Applicant's Representative accepted notice of one month as from 8 August 2018, giving an end date of 8 September 2019. Mr Gibb clarified that the rent arrears claimed in the Application in fact only extend to 22 August 2018. The Respondents have not been charged for the final pro rata payment due to 8 September 2019.
- 2.8. On the basis of the documents and submissions, Ms Cartwright sought a payment order in the reduced sum of £1144 in respect of rent arrears and cleaning charges of £144, less £250 recovered from the deposit protection

company, together with interest at 4.75% from the date of the decision. The tribunal allowed the Applicant's Representative to amend the Application to seek the reduced sum sought.

3. The tribunal makes the following findings-in-fact:

3.1. There was a Short Assured Tenancy agreement between the Applicant and the Respondents dated 23 May 2013;

3.2. The initial tenancy term was for the period 23 May to 23 November 2013. After that date the lease tacitly relocated on a monthly basis until its agreed end date of 8 September 2018.

3.3. The Respondents left the Property on or before the end date of 8 September 2018.

3.4. The rent payable in terms of the lease was £650.00 per calendar month payable monthly in advance on the date of entry and thereafter on or before 23rd of each month.

3.5. As at 23 August 2018 there were rent arrears of £1250 in respect of two months' rent lawfully due for the period 23 June to 22 August 2018.

3.6. The Applicant is not claiming rent arrears for the period from 23 August 2018 to 8 September 2018.

3.7. Cleaning charges of £144 were incurred which are the responsibility of the Respondents.

3.8. The deposit protection company deducted £250 from the Respondents' deposit of £250 and paid it to the Applicant, in respect of cleaning charges and other (including rent arrears).

3.9. The total sum by the Respondents to the Applicant in respect of rent arrears and cleaning charges, less refunded deposit is £1144.

4. Decision

4.1. The tribunal determined on the basis of the Application (including supporting documents) and the oral representations made on behalf of the Applicant; and in the absence of written or oral submissions from the Respondent; that the Applicant had proved that the Respondents owes the Applicant the amended sum of £1144.00 sought on behalf of the Applicant and made an order for payment by the Respondents to the Applicant for the said sum.

4.2. The tribunal awarded interest in terms of Rule 41A of the 2017 Rules from the date of the decision (which is the earliest date from which the tribunal can award interest) until payment. The short assured tenancy agreement provides for interest at a rate of four per cent above base rate of Bank of England. Base rate is currently 0.75%, giving an effective contractual rate of interest of 4.75%. The tribunal decided to award interest at the rate of 4.75% from the date of the decision on 8 May 2019 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.

S Tanner

8 May 2019

Susanne L. M. Tanner Q.C.
Legal Member/Chair