

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/19/0943

Re: Property at 12 Stamperland Avenue, Glasgow, G76 8EZ (“the Property”)

Parties:

Mr George Crawford, 12 Stamperland Avenue, Glasgow, G76 8EZ (“the Applicant”)

Mr Steven Miller, c/o 60 Lochlea Road, Glasgow, G43 2YB; (The first Respondent)

Ms Carolelynn Cameron c/o Apex Glasgow, 95 Panmure Street, Glasgow, G20 7SJ (“the Second Respondent”)

Tribunal Members:

Jan Todd (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 for the sum of £3,420 be granted against the Second Respondent in respect of rent arrears arising out of the tenancy of the Property by the Second Respondent from the Applicant.

Background

This was a case management discussion (CMD) in respect of an application by the Applicant dated 14th March 2019 for an order for payment in respect of arrears of rent against the Respondents who are the Guarantor and Tenant respectively of the tenancy of the Property from the Applicant.

The following documents were lodged with the application:-

1. A copy of the Short Assured Tenancy Agreement dated 1st May 2015 entered into between Mr Crawford the Applicant and Ms Cameron the tenant, and also signed by Mr Steven Miller as the Guarantor.
2. Copy bank statements from December 2017 to 24th September 2018
3. Copy e-mail dated 30th July 2018 from a firm of solicitors confirming notices were served on tenant giving two months' notice to leave and advising that if the tenant does not leave by 2nd September a court order would be required to legally remove the tenants.

The Applicant is claiming no rent was paid for the months of May, June, July, August and up to 24th September when he advised the tenant vacated the Property and the tenancy came to an end. The Rent is £900 per month payable in advance in terms of the tenancy agreement. The last rent shown as paid was on 2nd April 2018 as per the bank statements. The Applicant also advised in his application that the deposit of £900 was successfully claimed by himself from the tenancy deposit company leaving the sum due for non-payment of rent for 4 4/5 months as £3,420 ($44/5 \times £900 = £4320 - £900 = £3420$).

The Applicant requested that the Application be advertised by service by advertisement as he did not have a forwarding address for the tenant Ms Cameron and only a care of address for the guarantor Mr Miller. The Tribunal accepted the request for service by advertisement and advised the Applicant it would now serve the papers by advertisement on it's website in terms of Rule 6A of the Tribunal Rules.

The Respondents have been given notice of this CMD which is confirmed by the Certificate of Service of Advertisement dated 1st August showing that notification of the CMD was posted on the First Tier Tribunal for Scotland housing and Property Chamber Website between 14th June 2019 and 1st August 2019. The Tribunal considered it fair to proceed with the CMD in the absence of the Respondents fair notice having been given.

CMD discussion

- The Convener made introductions and explained the purpose of the CMD which is to explore the issues and to determine whether a full hearing is required or not. The Convener confirmed that the Tribunal can make any decision at a CMD that it can make after a full hearing.
- The Applicant attended along with Mr Mcleod who was attending as a supporter.
- Neither Respondent attended nor had either made any written representations.
- The Applicant confirmed that the details in the application were correct; in particular that the tenancy had come to an end when the last of the tenants possessions were removed on 24th September 2018; that no further sums towards the rent have been paid since April 2018; and that the sum outstanding remains at £3420 after the deposit was applied to the arrears of rent.
- The Convener asked if the Applicant had sought repayment from either respondent. The Applicant advised he had contacted the tenant but she

changed her e-mail and stopped contacting him after she left the Property. He tried contacting the Guarantor who is Mr Miller but he has not paid either.

- The Convener then explored the nature of the wording of the guarantee clause which is incorporated in the lease and which states – “The Guarantor undertakes to meet any costs incurred by the Landlord by virtue of the Tenant’s failure to meet their obligations under this agreement. The Guarantor agrees that his obligations under this Clause will remain in place until this agreement is terminated under clause 17. The Landlord may choose at his discretion to pursue either the Tenant or Guarantor in respect of any outstanding sums due.”
- In light of this the Applicant confirmed he wished to pursue only the tenant for the arrears of rent and moved to withdraw reference to the first Respondent Mr Miller.
- The Tribunal accepted this amendment, dismissed the case against the first respondent, and in the absence of any response from the Second Respondent granted the order for payment.

- **Findings in Fact**

1. The Applicant had entered into a lease of the Property with the Second Respondent Ms Cameron as tenant from 2nd May 2015. Said lease is dated 1st May 2015.
2. The lease was terminated on 24th September 2018 following service of a notice to quit and s33 notice by the Applicant’s solicitor and the Second Respondent, the tenant, vacating the property on 24th September 2018.
3. The rent due in terms of the lease was £900 payable monthly in advance.
4. The rent outstanding as at 24th September 2018 was £4320, the last payment having been made by the second Respondent on 2nd April 2018.
5. The deposit of £900 was successfully reclaimed by the Applicant from the tenancy deposit company which reduces the arrears outstanding to £3,420.
6. The tenancy agreement has a clause incorporating a guarantor. The clause states:- “The Guarantor undertakes to meet any costs incurred by the Landlord by virtue of the Tenant’s failure to meet their obligations under this agreement. The Guarantor agrees that his obligations under this Clause will remain in place until this agreement is terminated under clause 17. The Landlord may choose at his discretion to pursue either the Tenant or Guarantor in respect of any outstanding sums due.”
7. The Guarantor is Steven Miller the First Respondent who also signed the tenancy agreement.
8. The Guarantee clause states that the obligations remain only until the tenancy is terminated.
9. The Guarantee clause states that the Landlord can choose who to pursue for any outstanding sums due.
10. The Applicant and landlord indicated that he would wish to pursue the Second Respondent, the tenant.

- **Reasons for Decision**

The Tribunal found the Applicant credible in his submissions and found his statements corroborated by the written evidence provided.

The Tribunal found that even if the Applicant had not indicated that he wished to pursue only the Second Respondent, it would be unlikely that the guarantee would survive the termination of the lease. The Tribunal agreed that the order should be in respect of the only the Second Respondent

The Tribunal accepted that it was reasonable, having found that there are rent arrears due and owing by the Second Respondent as tenant, that an order for payment for that sum should be granted against the Second 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.

J Todd

Legal Member/Chair

1/8/19

Date