



**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/19/2127

Re: Property at Flat 1/1, 76 Sinclair Drive, Glasgow, G42 9YP (“the Property”)

Parties:

**Mr Waleed Shamki, 32 Lancelot Crescent, Wembley, HA0 2AY (“the
Applicant(s)”)**

**Mr Dahej Kassm, Flat 2-1, 92 Cartside Street, Glasgow, G42 9TQ; Mrs Mariam
Kassm, Flat 6/1, 120 Mossheights Avenue, Glasgow, G52 2TZ (“the
Respondent(s)”)**

Tribunal Members:

Jim Bauld (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order should be granted for payment in the sum
of £2,060.00**

Background

By application received between 9 July 2019 and 12 December 2019, the applicant sought an order under section 16 of the Housing (Scotland) Act 2014 and in terms of rule 70 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

On 18 December 2019, the application was accepted by the Tribunal and referred for determination by the tribunal.

The Case Management Discussion

- 1) After sundry initial procedure, a Case Management Discussion (CMD) took place on 4 February 2020. Intimation of that CMD was given to all parties.
- 2) The applicant was represented by his solicitor, Ms Joanna Millar from Messrs Gilson Gray. The first named respondent, Mr Dahej Kassm attended the CMD but was not represented. The second named respondent Mrs Miriam Kassm did not attend the CMD but was represented by Ms Laura Simpson, solicitor from Govan Law Centre
- 3) The tribunal explained the purpose of the CMD to parties and the powers available to the tribunal to determine matters. The tribunal explained the overriding objective of the tribunal as set out in the tribunal's rules.
- 4) The tribunal noted from the applicant's solicitor that the sum now being claimed was £2,060. This sum reflected the final arrears due at the conclusion of the tenancy. This sum reflected that an award had been made at another tribunal hearing in favour of the second named respondent against the applicant. The second named respondent's solicitor indicated that she agreed with this calculation of the outstanding rent and that the second named respondent accepted that she was jointly and severally liable for same.
- 5) The tribunal then asked various questions with regard to the application and heard from the first named respondent. The tribunal explained the position as now set out by the applicant. The tribunal noted that Mr Kassm was not represented and the tribunal explained to him the position with regard to liability for rent among joint tenants. The tribunal was especially mindful of the requirement of the overriding objective to ensure that parties be on an "equal footing" and able to "participate fully" in the proceedings
- 6) Mr Kassm indicated that he had left the property in November 2018. This was not disputed by the other parties. At that time he claimed he had agreed that the landlord would take one month's rent from the deposit and that he would no longer be liable for ongoing rent. He produced no written evidence of any such agreement regarding ongoing liability for rent. He had moved to another property. He did not accept that he was liable for rent after he had left the property
- 7) The tribunal explained the relevant law to Mr Kassm and in particular explained the concept of "joint and several liability" in respect of rent in a joint tenancy. The tribunal explained that he remained liable for rent until the tenancy was terminated. He remained liable even although he had removed himself from the property. He indicated that he would accept liability for one half of the outstanding amount. The tribunal explained that any order which

would be granted would require to be made against both parties. The tribunal explained that enforcement of any order would be a matter outwith the control of the tribunal.

- 8) At one point Mr Kassm made an offer to pay the sum of £100 per month towards the arrears. On being questioned by the tribunal he stated that this offer was based solely on him being liable for one half of the total amount claimed. He was not making an offer to pay the whole sum by instalments. The tribunal accordingly took the view that he was not seeking to make an application for a Time to Pay Order
- 9) The tribunal noted that the applicant wished to insist on the application for an order for payment of the now reduced amount. The tribunal noted there was no objection to this request from the solicitor acting for the second named respondent. Neither of the two representatives thought there was any need for a further hearing. The facts of the matter were agreed and the tribunal had sufficient information to determine the application.
- 10) The tribunal indicated to parties that it would make an order for payment as claimed by the applicant. The tribunal took this decision based on the agreement between the applicant and the second named respondent which correctly reflected the factual position regarding arrears and also correctly reflected the legal position with regard to the joint and several liability of joint tenants. The tribunal noted that although the first named respondent did not understand the law he did not dispute the factual position as set out by the other parties. .

Findings in Fact

- 1) The Applicant and the Respondents as respectively the landlord and tenant entered into a tenancy of the property which commenced on 1 September 2016
- 2) The tenancy was a short assured tenancy in terms of the Housing (Scotland) Act 1988
- 3) The tenancy ended on or around 9 May 2019
- 4) As at the end of the tenancy, the respondents owed rent arrears to the applicant in the sum of £3,560.00. Appropriate accounting had been provided with the application to the tribunal.
- 5) Subsequent to the termination of the tenancy, an order for payment of £1,500 had been made in favour of the second named respondent against the applicant

- 6) By setting off that award, the final amount owed by the respondents at the termination of the tenancy was £2,060.00

Decision

The order for payment of arrears is granted. The tribunal is satisfied, based on the evidence presented on behalf of the applicant and which is reflected in the Findings in Fact and the notes of the CMD set out above, that rent arrears of £2,060 are outstanding and are due to be paid by the respondents.

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 Bauld

Legal Member/Chair

4 February 2020

Date