



**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/19/1536

Re: Property at 23/3 Gauze Street, Paisley, PA1 1ES (“the Property”)

Parties:

Punch Partnerships (PML) Limited, Jubilee House, Second Avenue, Burton-upon-Trent, DE14 2WF (“the Applicant”)

Mr Gary McKechnie, address unknown (“the Respondent”)

Tribunal Members:

Sarah O’Neill (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 by the respondent of the sum of £7660 with interest thereon at the rate of three per cent (3%) per annum running from the date of this decision until payment should be granted in favour of the applicant.

Background

1. An application was received on 15 May 2019 for a payment order brought in terms of rule 70 (Application for civil proceedings in relation to an assured tenancy under the Housing (Scotland) Act 1988) of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”).
2. The applicant was seeking payment of rent arrears of £8140 from the respondent in relation to the property, being the amount of arrears outstanding as at the date of the application, or the sum payable at the time of the payment order being granted, with interest at the rate of 8% per annum from the date of the application until payment.

3. The application included a copy of the tenancy agreement and a rent statement showing the rent outstanding up until 22 April 2019 to be £8140.
4. The tribunal instructed sheriff officers to serve notice of a case management discussion (CMD) scheduled for 21 August 2019, together with the application papers and guidance notes, on the respondent at the property address. The sheriff officers were unable to serve the papers on the respondent at that address, and were advised by a neighbour that the respondent had left the property. The CMD was therefore cancelled, and a new CMD arranged for 22 October 2019.
5. The papers for the rescheduled CMD were served by advertisement on the First-Tier Tribunal Housing and Property Chamber website between 2 September and 22 October 2019.
6. No written representations or time to pay application were received from the respondent prior to the CMD.

The Case Management Discussion

7. A case management discussion was held on 22 October 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The applicant was represented by Ms Louise Gould, paralegal at TLT LLP, who gave evidence on its behalf. The respondent was not present or represented.
8. The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a case management discussion had been duly complied with. The tribunal had before it a certificate of advertisement stating that service by advertisement on the respondent was carried out on the First-Tier Tribunal Housing and Property Chamber website between 2 September and 22 October 2019. The tribunal was satisfied that the respondent had been cited to attend the CMD by advertisement in terms of rule 6A of the 2017 rules, and had therefore been given lawful notice of the proceedings.
9. The tribunal delayed the start of the discussion by 10 minutes, in case the respondent had been detained. He did not appear, however, and no telephone calls or messages had been received from him. The tribunal therefore proceeded with the CMD in the absence of the respondent.
10. Ms Gould confirmed that no further payments had been made towards the outstanding rent since the application was made. She indicated that the amount outstanding had in fact increased. The tribunal chairperson pointed out that no request to amend the application to increase the sum claimed had been received by the tribunal as required by rule 14A of the 2017 rules. Miss Gould indicated that, rather than seek an adjournment to allow such

amendment to be made, she wished to proceed on the basis of the sum set out in the application.

11. She confirmed that the respondent had now moved out of the property, and the applicant had taken possession of the property. There had been no contact from the respondent since the application was submitted.
12. The tribunal chairperson asked whether she could provide any evidence that the respondent had been sent notification of the outstanding sum claimed. Ms Gould confirmed that, other than the application itself, the only notification to the respondent which she could point to was the form AT6 which was before the tribunal. This had been served on the respondent by sheriff officer on 11 April 2019, and referred to an attached statement of account as at 3 April 2019, showing arrears in the sum of £7660. It did not therefore include one month's rent of £480 for the following month, which had been included in the application.
13. The tribunal chairperson noted that there was provision in the tenancy agreement for a deposit of £480 to be paid by the respondent to the applicant. She asked what had happened to the deposit money at the end of the tenancy. Ms Gould said that the applicant had advised her that no deposit had in fact been paid by the respondent.
14. Ms Gould asked the tribunal to grant an order in favour of the applicant against the respondent for the sum of £8170, together with interest thereon as set out in the application.

Findings in Fact

15. The tribunal made the following findings in fact:
 - The tribunal was satisfied that there was an assured tenancy in place between the parties. While the tenancy agreement stated that it was a short assured tenancy agreement, no form AT5 had been submitted with the application.
 - The applicant was the landlord in terms of the tenancy agreement between the parties signed on 17 December 2014 and commencing on 22 December 2014. The title deed for the property showed that the applicant was the owner of the property.
 - The rent due under the tenancy agreement was £480 per calendar month payable in advance.

- The respondent had made no rental payments since January 2018, and as at 22 April 2019, he owed the applicant the sum of £8140 in rental payments.

Reasons for Decision

16. Having considered all the evidence before it, the tribunal decided to make an order for payment by the respondent to the applicant of the sum of £7660. The tribunal was satisfied that the respondent had had fair notice that this sum was due by virtue of the form AT6 which had been served on him by sheriff officer. Given that notice of the proceedings, including the application paperwork, had to be served by way of advertisement, the tribunal was not satisfied that the respondent had had fair notice of the additional £480 claimed in the application form.
17. The tribunal accepted Ms Gould's evidence that no deposit had been paid by the respondent, despite the terms of the tenancy agreement regarding this. It did not therefore take any deposit into account in calculating the amount to be paid.
18. The tribunal also considered the applicant's request for interest of 8% per annum to be added to the sum payable from the date of application until payment. The tribunal noted that there was no statutory basis for the tribunal to grant interest at the judicial interest rate of 8% which applies in the sheriff court. In terms of rule 41A of the 2017 rules, the tribunal may include interest when making an order for payment. Any such interest is to be at the rate either a) stated in the relevant tenancy agreement or b) ordered by the tribunal, and runs from the date of the tribunal's decision.
19. As the tenancy agreement made no provision for interest to be paid, it was therefore for the tribunal to decide whether to include interest, and if so, at which rate. The tribunal decided to grant interest as requested, and considered that an appropriate interest rate would be 3% per annum, given the Bank of England base rate and current rates for borrowing for short term loans.

Decision

The tribunal grants an order for payment by the respondent to the applicant for the sum of £7660 with interest thereon at the rate of three per cent (3%) per annum running from the date of this decision 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 O'Neill

Legal Member/Chair

22/10/19

Date