



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) for civil proceedings in relation to matters associated with a tenancy under the Housing (Scotland) Act 1988 and Rule 70 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017

Chamber Ref: CV/18/2045

Re: Property at 51 Diana Avenue, Glasgow, G13 3JW
("the Property")

Parties:

Ms Mary Kelly, 29 Kestrel Road, Knightswood, Glasgow, G13 3QS
("the Applicant")

Mr Colin McInnes, c/o 29 Kestrel Road, Knightswood, Glasgow, G13 3QS
("the Applicant's Supporter")

Mrs Elizabeth Brooke, 51 Diana Avenue, Glasgow, G13 3JW
("the Respondent")

Tribunal Members:

Susanne L M Tanner Q.C. (Legal Member)
Elizabeth Dickson (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent should pay the Applicant the sum of THIRTY NINE THOUSAND FIVE HUNDRED AND TWENTY POUNDS (£39,520) STERLING; and made an Order for Payment in respect of the said sum.

STATEMENT OF REASONS

1. Findings-in-fact

- 1.1. There is a short assured tenancy agreement between the Applicant and the Respondent which was signed by both parties on 1 May 2012.

- 1.2. The initial term of the tenancy was for the period 1 May 2012 for a period of 12 months and since then the lease has tacitly relocated on an annual basis.
- 1.3. The rent payable is £520 per calendar month payable monthly in advance on the 1st calendar day of every month and there have been no rent increases.
- 1.4. As at 7 August 2018 the rent arrears amounted to £39,520.00.
- 1.5. No payments in respect of the arrears have been made by the Respondent to the Applicant in the period from 7 August 2018 to 11 January 2019.

2. Procedural background

- 2.1. On 7 August 2018 the Applicant made an Application to the tribunal “the Application”) under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”) for civil proceedings in relation to an assured tenancy under the Housing (Scotland) Act 1988 (“the 1988 Act”).
- 2.2. In the Application the Applicant seeks payment from the Respondent of the sum of £39,520.00, in respect of rent arrears under the short assured tenancy between the Applicant and the Respondent.
- 2.3. The Applicant lodged with the Application:
 - 2.3.1. A paper apart headed “Section 5, “possession/eviction grounds”.
 - 2.3.2. a copy of the Short Assured Tenancy agreement dated 1 May 2012;
 - 2.3.3. a copy of a repairing standard letter (undated);
 - 2.3.4. a copy of the AT5 Notice dated 1 May 2012 signed by the Respondent;
 - 2.3.5. a copy of the AT6 dated 18 July 2018; with proof of service on 18 July 2018;
 - 2.3.6. a copy of a notice to Quit dated 18 July 2018
 - 2.3.7. Section 11 notice sent to the local authority;
 - 2.3.8. Copy rent statement of the applicant from 1 May 2012 to 1 August 2018.

2.4. The sum sought by the Applicant represents rent arrears as shown on the rental statement as being outstanding as at the date of making the Application on 7 August 2018, namely £39,520.00.

2.5. The Application was accepted for determination by a tribunal on 20 August 2018.

2.6. A hearing took place on 27 November 2018. Reference is made to the Notes on the Hearing which were sent to parties following the hearing. The hearing was adjourned to 11 January 2019 at 10.00am in Glasgow Tribunals Centre.

2.7. The Respondent was ordered at the Hearing and by way of a Direction of the tribunal dated 27 November 2018 provide to the tribunal's administration by 4 January 2019 at the latest:

2.7.1. Medical information in relation to her fitness to participate in the hearing, including a soul & conscience letter, if appropriate; and

2.7.2. Details of any representative she has appointed.

2.8. Both parties were further notified by letters dated 28 November 2018 of the date, time and place of the adjourned hearing in relation to the Application. The Respondent personally signed for the letter on 29 November 2018.

2.9. The Respondent was invited to make written representations in response to the Application by 28 December 2018. No written representations were submitted.

2.10. On 3 January 2019 a letter was submitted on behalf of the Respondent, by Finnieston, Franchi McWilliams attaching a letter from the Respondent's General Practitioner, Dr Paul Costello, dated 27 December 2018 swearing on soul and conscience that he did not feel that the Respondent was fit to attend the hearing on 11 January 2019. The solicitors confirmed that they were not instructed by the Respondent to appear on her behalf at the hearing.

2.11. There was further correspondence between the tribunal's administration and the solicitors in which they stated that it could be implied from the provision of the soul and conscience letter that the Respondent was submitting a postponement request. The tribunal stated that it considered that the submission of the letter from the General Practitioner was in furtherance of the tribunal's first Direction and that the hearing would not be postponed. The Respondent and the solicitors who had been assisting her were again asked on 8 January 2019 to confirm by 5pm on 9 January 2019 whether they were acting as her representative and they stated that they were not. They stated that they understood that a neighbour of the Respondent would act as her representative.

2.12. The Respondent did not adhere to the second Direction of the tribunal to provide details of any representative she has appointed by 5pm on 9 January 2019.

2.13. The Respondent made contact with the tribunal's administration on 10 January 2019 stating that she was intending to attend the hearing the following day.

3. Hearing: 11 January 2019 at 1000h, Glasgow Tribunals Centre, York Place, Glasgow

3.1. The Applicant attended the hearing with Colin McInnes, supporter.

3.2. The Respondent did not attend and no Representative attended on her behalf. The tribunal waited until 10.00am before commencing the hearing but no contact was made by the Respondent and the hearing proceeded in her absence. However, the Respondent attended the venue after the hearing had concluded (see below).

3.3. The Applicant was advised by the tribunal chair of what had occurred procedurally since the last hearing date, the fact that the Respondent had not attended or sent a representative and the fact that the hearing would take place in her absence. The tribunal chair further explained the possibility of an application for recall of decision made in absence of the Respondent.

3.4. The tribunal moved on to consider the Application and hear submissions from the Applicant with reference to the documents.

3.5. Reference was made to the Short Assured Tenancy agreement, including its term and the monthly rent together with the rent statement to 1 August 2018.

3.6. The Respondent has not lodged any representations challenging the arrears.

3.7. The tribunal was satisfied that rent arrears in the sum of £39,520.00 were lawfully due by the Respondent to the Applicant and made an Order for Payment in respect of the said sum sought by the Applicant.

3.8. In her Application the Applicant had mentioned the possibility of a payment plan. The tribunal chair explained that at present the tribunal has no power to make time to pay orders so the payment order would be made for the full amount sought and it would be a matter for the Applicant to enforce the tribunal's order.

3.9. Attendance by Respondent after the hearing

3.10. After the tribunal had made its decision to make an order for payment and the Hearing had concluded, the Respondent appeared in the venue at approximately 10.30 together with an acquaintance. The clerk advised the tribunal of this fact and the tribunal instructed the Clerk to speak to the Respondent to ascertain why she was late and inform her that the hearing had concluded and a decision had been reached by the tribunal.

3.11. The Respondent first stated that she thought the hearing was at 1100am and said that she had been told that yesterday by a member of the tribunal's staff. However, when the Clerk to the hearing showed her the letter notifying her of the date, time and place as being at 1000am she then stated that she had been in a car accident on the way to the tribunal. The tribunal Clerk advised her that the hearing had concluded, the tribunal had made its decision and that the decision and order would be sent out to her. She was also advised that the accompanying letter would outline the procedures for recall, review and permission to appeal applications.

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.

Susanne L M Tanner Q.C.

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

11 January 2019