

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/18/3300

Re: Property at 38 Woodhead Green, Hamilton, South Lanarkshire, ML3 8TN ("the Property")

Parties:

Mr Ronnie Crawford and Ms Ann Prime, 92 Overton Crescent, East Calder, West Lothian, EH53 0RH; 81 Ormiston Drive, East Calder, West Lothian, EH53 0RB ("the Applicants")

Mr Adrian East, 38 Woodhead Green, Hamilton, South Lanarkshire, ML3 8TN ("the Respondent")

Tribunal Members:

**Susanne L. M. Tanner Q.C. (Legal Member)
Gerard Darroch (Ordinary Member)**

Decision (in absence of the Respondent)

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 SEVEN HUNDRED AND EIGHTY FIVE (£1785.00) STERLING; and made an Order for Payment in respect of the said sum; with interest from the date of the decision until payment at the rate of eight per cent per year.

STATEMENT OF REASONS

1. Procedural Background

- 1.1. The Applicants made an Application to the tribunal on 7 December 2018 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 £1190.00 in respect of rent arrears; together with legal costs of the debt recovery process and sheriff officers' costs.
- 1.2. The documentation with the Application comprised:
 - 1.2.1. Page 1 of a Short Assured Tenancy Agreement which appeared to be dated 25 October 2017;
 - 1.2.2. Four rent arrears letters (two undated, 22 November 2018 and 4 December 2018);
 - 1.2.3. Online banking statements from Santander showing a payment on 10 October 2018, with handwriting thereon;
- 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. On 18 December 2018, the Application was accepted for determination by the tribunal.
- 1.5. A Case Management Discussion ("CMDs") was fixed for 29 January 2019 and parties were notified of the date, time and place of the CMD.
- 1.6. At 09.51 on the day of the CMD, 29 January 2019 the Respondent telephoned and then sent an email to the tribunal's administration to advise that he could not attend the CMD because his son was ill. Within his email he advised that he was moving out of the Property on 1 February 2019, would not provide a forwarding address and was happy for further correspondence to be made by email or phone (with a mobile telephone number provided).
- 1.7. A CMD Note was prepared with Directions ordering both parties to do certain specified things within 14 days of the date of the CMD. It was also discussed during the CMD and recorded in the CMD Note that the Respondent was due to leave the Property by 1 February 2019.
- 1.8. The tribunal directed the Respondent to lodge a written submission with the legal basis for any defence to the claim to rent arrears within 14 days of the CMD. The Respondent did not lodge any written submissions in response to the direction.

- 1.9. On 4 February 2019 the tribunal attempted to notify the Respondent of the date time and place of the hearing by service of the CMD Note and letter of notification by Sheriff Officers. (However, see below regarding further investigations in relation to service).
- 1.10. The Respondent did not submit any written representations or documents in advance of the hearing.
- 1.11. A hearing took place on 20 February 2019 at 1400h at Glasgow Tribunals Centre, Room 111. Reference is made to the Notes on the Hearing which were produced.
- 1.12. The Applicants attended the hearing.
- 1.13. The Respondent did not attend the hearing. However, although there was a certificate of service for the letter of notification by Sheriff Officers on 4 February 2019, the letter had been deposited through the letterbox of the Property on a day after the tribunal had been made aware that the Respondent had left the Property.
- 1.14. The Applicants stated at the hearing that that the Respondent left the Property on or before 1 February 2019 because they took back possession on 1 February 2019.
- 1.15. After an adjournment to seek further information about service from its administration team, the tribunal decided that it was unable to proceed with substantive matters in the absence of the Respondent in terms of Rules 29 of the 2017 Rules and that the hearing should be adjourned to allow the Respondent or a Representative to attend, if he so wished, but there were some procedural matters which could be dealt with and intimated to the Respondent.
- 1.16. The Applicants amended the Application with the consent of the tribunal in terms of Rule 13 of the 2017 Rules, to increase the sum sought to £1785.00 (which represents 3 months rent, as supported by evidence provided in the rent statement dated 2 January 2019, which was lodged on 11 February 2019); to seek interest in terms of Rule 41A from the date of any decision until payment, at the judicial rate of eight per cent (8%) per year.
- 1.17. The hearing was adjourned for service on the Respondent by advertisement in terms of Rule 6A of the 2017 Rules; and by email to adeeast1@gmail.com.

- 1.18. Directions were issued to the Applicants ordering them to produce a full copy of the tenancy agreement and an updated rent statement.
- 1.19. On 24 February 2019, the Applicants submitted a short assured tenancy agreement and an updated rent statement to 1 January 2019.
- 1.20. On 11 March 2019 the Respondent was sent an email to the email address provided by him for tribunal communications, attaching (1) a copy of the Notes on a Hearing which included notification of the amendments to the Application to increase the sum sought to £17850.00 and to seek interest at the rate of eight per cent per year from the date of the decision until payment and (2) the notification of the date, time and place of the adjourned hearing on 1 April 2019 at 10.00h at Glasgow Tribunals Centre, 20 York Street, Glasgow.
- 1.21. On 15 March 2019 the Respondent was notified of the date, time and place of the adjourned hearing in terms of Rule 6A of the 2017 Rules, by advertising the same on the tribunal's website.
- 2. Hearing: 1 April 2019 at 1000h, Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT**
- 2.1. The Applicants attended the hearing.
- 2.2. The Respondent did not attend the hearing and made no contact with the tribunal's administration or venue. The tribunal waited until 10.14h and started the hearing in the absence of the Respondent. The tribunal was satisfied 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 Applicants and all the material before it, in terms of Rule 29 of the 2017 Rules.
- 2.3. The tribunal noted that there is a Short Assured Tenancy between the parties which was signed on behalf of both parties on 25 October 2017. The initial tenancy term was for the period 1 November 2017 to 1 May 2018. Since then the lease has tacitly relocated on a monthly basis. The rent payable in terms of the lease is £595.00 per calendar month payable monthly in advance on the date of entry and thereafter on or before 1st of each month.
- 2.4. The rent statement to 1 February 2019 showed that as at 1 February 2019 there were three months' rent arrears in the sum of £1785.00.

2.5. In relation to the Applicants' claim for interest, the tenancy agreement provides in Paragraph 19.2 for interest on unpaid rent at the rate of eight per cent per year.

2.6. In relation to the claim for Sheriff Officers' fees the Applicants stated that these had been incurred in relation to serving the notice to quit and they anticipated that they may incur further fees in enforcing any order of the tribunal. The tribunal chair explained that they could not claim future costs in the present application and that the service of the notice to quit was a required document in relation to the end of the tenancy rather than being specifically related to the Application.

2.7. The Respondent has not lodged any substantive defence to the Application despite being ordered to produce written submissions of the legal basis of any such defence within 14 days of the CMD on 29 January 2019.

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

3.1. There is a Short Assured Tenancy between the Applicants and the Respondent dated 25 October 2017.

3.2. The initial tenancy term was for the period 1 November 2017 to 1 May 2018. Since then the lease has tacitly relocated on a monthly basis.

3.3. The rent payable in terms of the lease is £595.00 per calendar month payable monthly in advance on the date of entry and thereafter on or before 1st of each month.

3.4. The Respondent was served with a Notice to Quit to leave the Property by 1 February 2017.

3.5. The Respondent left the Property on or before 1 February 2017.

3.6. As at the end of tenancy on 1 February 2019, the rent arrears were £1785.00.

3.7. The Short Assured Tenancy agreement provides for interest on payments at eight per cent per year until paid.

4. **Decision**

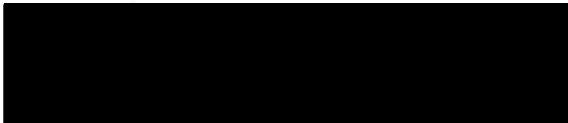
4.1. The tribunal determined on the basis of the Application (including supporting documents) and the oral representations made on behalf of the Applicants; and in the absence of written or oral submissions from the Respondent; that the Applicant had proved that the Respondents owes the Applicant the

amended sum of £1785.00 sought on behalf of the Applicant and made an order for payment by the Respondent 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 eight per cent per year.

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.

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

1 April 2019