



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies)(Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/20/1811

Re: Property at 60 MacDonald Terrace, Lochgilphead, Argyll, PA31 8TE (“the Property”)

Parties:

Ms Melanie Lowndes, 333d Kingston Road, Wimbledon Chase, London, SW20 8JX (“the Applicant”)

Mr Tyler Taylor-Smith, Ms Laura Downie, Unknown, Unknown; 60 MacDonald Terrace, Lochgilphead, Argyll, PA31 8TE (“the Respondents”)

Tribunal Member:

Steven Quither (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondents jointly and severally are to pay to the Applicant the sum of THREE THOUSAND SIX HUNDRED POUNDS (£3,600) ONLY.

1. BACKGROUND

This is an application for payment of rent arrears arising out of a Tenancy Agreement between the parties commencing 22 March 2020, in respect of which the Applicant states no rent has been paid apart from the first payment due on or about said date of 22 March 2020. Following upon sundry procedure, a Case Management Discussion (“CMD”) was fixed for 16 October 2020.

2. CASE MANAGEMENT DISCUSSION on 16 OCTOBER 2020

Only the Applicant attended and accordingly it was not possible to identify any facts capable of being agreed between the parties.

At commencement of same, the Applicant asked for amendment of the sum claimed, to add an additional month's rent due, amending the sum sought to £2700, which I permitted her to do.

Since there was no appearance by either Respondent, I was concerned about what notice of the CMD had been given to them.

Having checked the position, I noted that notice of this CMD with accompanying documentation was made personally on the Second Respondent by Sheriff Officer on 18 September 2020, almost a month before the CMD date.

However, Service on the First Respondent had been problematic. Said Sheriff Officer appeared to have been unable to trace the address stated to be his and in addition a previous attempt to serve documentation by recorded delivery, apparently successfully effected on 25 September, was subsequently returned, marked "I am not the intended recipient". In addition, recorded delivery service of this CMD, apparently successfully effected on 7 October appeared, going by the signature on the Royal Mail Track & Trace receipt, to have been signed for by the same recipient. My concern therefore was that that documentation might be similarly returned in due course.

Accordingly, I proceeded on the basis service had only been successfully made on the Second Respondent, as above stated. All of the above being so, I considered issues to be resolved at this CMD to be whether I could make an order for payment against either or both respondents in the amended amount of £2700.

I asked the Applicant for some general background information regarding the Tenancy Agreement and was advised that after her previous tenant left the Property she had had some considerable interest in it and decided to proceed with letting it to the Respondents on the basis of a reasonably favourable reference having been received from the Second Respondent's previous landlord. Albeit the First Respondent was also a tenant, on the basis of what the Applicant understood to be a relationship he was in with the Second Respondent, by the CMD date the Applicant understood that he had never, in fact, moved in but did pay the initial deposit and first month's rent. Thereafter, she advised that no further rent was paid and the Second Respondent had continued to occupy the Property, despite offers having been made by the Applicant and First Respondent for the First Respondent to be removed from the tenancy, which might then have enabled the Second Respondent to seek assistance by way of Universal Credit or suchlike regarding payment of rent. Against this background, I explored with the Applicant the possibility of making an order at this CMD against the Second Respondent solely, on the basis that, in terms of Paragraph 1.5 of the Interpretation section of the General Tenancy Conditions, at page 6 of the Tenancy Agreement, the Respondents' liability was joint and several. My feeling was that this might afford the Applicant the remedy she sought while also providing the Second Respondent with a right of relief in any amount she considered should be paid by the First Respondent, a matter which could be left to be resolved between them. The Applicant felt, however, she would prefer to have any order against both Respondents, since she felt this would afford her better prospects of recovery. That being so, I took the view that a further CMD would be required, to attempt service on the First Applicant.

Given the difficulties so far in effecting service on the First Respondent, I

considered how best to achieve this. The Applicant advised that she understood the First Respondent was in employment, his last employment known to her being carrying out forestry work in the Selkirk area (obviously some distance from Lochgilphead), so I was concerned attempted service on him there might be problematic. I was also aware of the previous frustrated attempts at service on him by both Sheriff Officers and recorded delivery. In all of these circumstances, I decided that intimation and service of documentation for the further CMD, on a date to be assigned by the Tribunal should be made as follows:--

- a) On the First Respondent to his e-mail address as provided by the Applicant in the application, in terms of Rule 6(1)(a) and, in addition, by advertisement, in terms of Rule 6A; and
 - b) On the Second Respondent by Sheriff Officer, as previously.
- A further CMD was then fixed for 3 December 2020.

3. CASE MANAGEMENT DISCUSSION on 3 DECEMBER 2020

Again only the Applicant attended. From documentation available to me, I was satisfied that intimation of this CMD had been made as instructed, namely by e-mail to the First Respondent on 28 October, appropriate advertisement on this Tribunal's website on the same date (deemed carried out 15 days later) and by Sheriff Officer intimation on the Second Respondent, also on 28 October. Accordingly, I was satisfied I could proceed in the absence of the Respondents.

Again, similarly to the previous CMD, the Applicant asked to amend the sum sought to take account of further rent arrears which had now accrued since the previous CMD and produced an up to date Rent Statement vouching same. Accordingly, the sum under consideration now stood at £3,600. I permitted amendment of her claim accordingly.

She advised she had had made further enquiries and had been in some contact with both Respondents since the last CMD but neither of them appeared to be in any way concerned to become involved in these proceedings and, indeed, the Second Respondent had demonstrated something of an umbrageous attitude towards the efforts made by the Applicant to initiate some sort of dialogue with her. In any event, no settlement proposal was forthcoming from either of them and neither attended this CMD. In these circumstances, she was seeking an order against them for the £3,600 rent arrears up till 22 November 2020. Obviously, in the absence of both Respondents, there was no contrary argument to be considered.

4. FINDINGS IN FACT

That rent arrears due to the Applicant have accrued in the sum of £3,600 up till 22 November 2020 and the Respondents are liable for same jointly and severally, reflecting the terms of their liability to pay rent in terms of General Tenancy Condition 1.5 on p6 of the Tenancy Agreement.

5. REASONS FOR DECISION

I was satisfied with the information provided by the Applicant regarding the arrears due and, in the absence of any appearance, information or argument

by the Respondents to the contrary, considered it just to make the award in the sum sought of £3,600.

6. DECISION

To make an order for payment by the Respondents jointly and severally to the Applicant of THREE THOUSAND SIX HUNDRED POUNDS (£3,600) ONLY.

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.

Steven Quither

**S.R. QUITHER
Legal Member**

**3 DECEMBER 2020
Date**