

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 section 16 of the Housing (Scotland) Act 2014 (“2014 Act”)

Chamber Ref: FTS/HPC/CV/18/1943

Re: 12 GFL Tayview Flats, Dock Street City Centre, Dundee, DD1 4BT (“the Property”)

Parties:

Grant Property Solutions Limited, 14 Coates Crescent, Edinburgh, EH3 7AF (“the Applicant”)

**Miss Dana Soutar, G/L 109 Arbroath Road, Dundee, DD4 6HS; and
Ms Amber Munro, 29 Sidlaw Crescent, Coupar Angus, Blairgowrie, Perthshire, PH13 9BX
(together “the Respondents”)**

Tribunal Member:

Pamela Woodman (Legal Member)

Present:

The case management discussion in relation to case reference FTS/HPC/CV/18/1943 took place at 11.30am on Wednesday 9 January 2019 at Dundee Carers Centre, Seagate House, 132-134 Seagate, Dundee, DD1 2HB (“the CMD”). Mr Sam May and Mr Brian Grieve of the Applicant were present at the CMD. Miss Dana Soutar (“Respondent 1”) was present at the CMD. Ms Amber Munro (“Respondent 2”) was not present, nor was she represented, at the CMD. The clerk to the Tribunal was Victoria Hammill.

Decision (in absence of the one of the Respondents (Ms Amber Munro))

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:

BACKGROUND

1. An application had been made to the Tribunal under section 16 of the 2014 Act for civil proceedings in relation to matters associated with a tenancy under the

Housing (Scotland) Act 1988 (“**1988 Act**”). The application was made in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended, (“**2017 Regulations**”). More specifically, the application was made in terms of rule 70 (*Application for civil proceedings in relation to an assured tenancy under the 1988 Act*) of the HPC Rules.

2. The order sought was an order for payment against both Respondents for “rent arrears in the sum of £1522.23 along with interest at a judicial rate of 8% from the date of this application until payment along with expenses”.
3. The application was received by the Tribunal on 3 August 2018.
4. A notice of acceptance of the application was issued by the Tribunal dated 14 August 2018 under rule 9 of the HPC Rules (“**Notice of Acceptance**”), which confirmed that the application paperwork had been received by the Tribunal on 25 June 2018.
5. An earlier case management discussion was held on 30 November 2018 but the legal member in that case was not satisfied that Respondent 2 had been given due notice of that case management discussion and so that case management discussion was adjourned until 9 January 2019.
6. This decision arises out of the CMD.

PROCEEDINGS

7. Respondent 1 confirmed that the following details were correct:
 - a. The start date of the tenancy was 26 January 2016;
 - b. The end date of the tenancy was 26 July 2016;
 - c. The rent payable by the Respondents in respect of the Property was £660 per month; and
 - d. The details set out in the rent statement covering the period from 19 January 2016 to 25 October 2016 (“**Rent Statement**”) were correct and so she accepted that the outstanding rent was £1,522.23.
8. Mr May confirmed that the details in the Rent Statement were still accurate. He had checked them on the day prior to the CMD.
9. Respondent 1 noted that she had paid her share of the rent throughout the period of the tenancy but acknowledged that she was aware of her obligations in terms of the Tenancy Agreement regarding joint and several liability. She noted that she had lost quite a lot of money as well because she had lost her deposit.

10. Mr May confirmed that the full amount of the deposit was recovered from Safe Deposits Scotland with most of it relating to damage to the Property and only £131.93 (as set out in the Rent Statement) relating to rent arrears.
11. No one present had been given any reason by Respondent 2 for her not paying the rent when due.
12. Neither Mr May nor Mr Grieve was able to provide any legal basis for the claim of judicial expenses.
13. The Legal Member referred the parties to rule 40 of the HPC Rules regarding the awarding of expenses.
14. On the matter of the identity of the Applicant, the Legal Member noted that the registered proprietor of the Property was Alan Thomas McIntyre, who was also noted as the landlord in the Tenancy Agreement. The Legal Member had been provided with an e-mail purporting to be from Alan McIntyre to David Brash of the Applicant which stated "Dear Louise Gould of TLT Solicitors, Please take this as official approval to act on my behalf with respect to recovering arrears related to 12 Dock Street in Dundee." Neither Mr May nor Mr Grieve was able to explain why the application had been made in the name of the Applicant rather than the name of Mr McIntyre. They explained that TLT Solicitors (who were named as the representatives of the Applicant in the application form) had completed the form.
15. It was explained that, based on the application as it stood, any order for payment would be made in the name of the Applicant rather than Mr McIntyre. Both Mr May and Mr Grieve confirmed that any sums recovered would belong to Mr McIntyre, that they would be refunded to him and that the Applicant was acting as Mr McIntyre's agent in recovering these sums. The Legal Member had Mr May and Mr Grieve confirm this to her at two different points in proceedings and advised them that this would be recorded in the written decision of the CMD.
16. Mr Grieve indicated that the Applicant would prefer for the matter to be determined at the CMD.
17. Respondent 1 indicated that she would prefer that any order was not granted against her as she had paid her rent and so was happy for the case to be continued if there was a possibility that Respondent 2 might appear.

REASONS FOR DECISION

18. The Legal Member was satisfied, on the balance of probabilities, that Respondent 2 had received due notice of the CMD but had not appeared. There had been no communication from Respondent 2 to the Tribunal after notice of the CMD had been served by sheriff officers on 10 December 2019.
19. The Tenancy Agreement provided that the Respondents were jointly and severally liable. Accordingly, any arrears of rent may be pursued against either

or both of them (up to the amount of the arrears in the aggregate and without any double counting).

20. Based on the confirmations provided by Respondent 1 and other documentation provided, the Legal Member was satisfied, on the balance of probabilities, that the sum of £1,522.23 was due.
21. The Applicant had not provided any legal basis to support a claim for judicial interest and so no judicial interest was awarded.
22. The Legal Member was not satisfied that the requirements of rule 40 of the HPC Rules had been met and so no award of expenses was made.

DECISION

23. The Tribunal decided that an order be granted against the Respondents (jointly and severally) for payment of the sum of £1,522.23 (one thousand five hundred and twenty two pounds and twenty three pence) sterling.
24. The order referred to in the preceding paragraph was intimated orally to Mr May and Mr Grieve of the Applicant and Respondent 1 during the CMD.

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.

P. WOODMAN

Legal Member

Date

9 January 2019