



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/21/3130

Re: Property at 1/3 462 Paisley Road West, Glasgow, G5 8RE (“the Property”)

Parties:

Mr Mobeen Beg, 278 Paisley Road West, Glasgow, G51 1BQ (“the Applicant”)

Miss Saba Tubassam, 1/3 462 Paisley Road West, Glasgow, G5 8RE (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Order for Payment against the Respondent in favour of the Applicant in the sum of £17,560, with interest at the rate of 3% per annum from today until payment.

Background

[1] The application before the Tribunal was made in terms of Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The Applicant submitted an application for payment of £15,310. A case management discussion took place on 14 March 2022 and reference is made to the note from that discussion.

The hearing

[2] The Applicant was represented by Miss Donnelly, solicitor. The case management discussion proceeded by conference call and in the absence of the Respondent or any representative on her behalf. As a preliminary matter, Miss Donnelly moved to increase the sum sued for to £17,560 to reflect the

current level of arrears. She advised that this was intimated to the Respondent by email on 5 May 2022, to which a response was received in which the Respondent advised that she intends to return the keys to the property. An up to date rent statement was produced in support of the motion to increase the sum sued for. Miss Donnelly then proceeded to lead evidence from the Applicant.

Summary of Evidence

Mobeen Beg

- [3]** The Applicant is Mobeen Beg, aged 43, who resides at 278 Paisley Road West, Glasgow, G51 1BQ. He is employed as a part time delivery driver and is based in Scotland. He is the sole proprietor of the subjects at 1/3, 462 Paisley Road West, Glasgow. He purchased the property in 2006. There is a mortgage over the property and the lender is Halifax Bank of Scotland.
- [4]** He has been in contact with the solicitors acting for his lender and they advised him that court proceedings will be raised against him shortly for recovery of possession as a result of mortgage arrears having accrued.
- [5]** In 2017, he and his wife decided to relocate to England for work reasons. His wife went first and he moved out of the property in May 2018. He instructed a letting agent in or around November 2018 with a view to letting the property. The letting agent identified the Respondent and her husband, Mohammed Sharif, as potential tenants. The Respondent and her husband moved into the property in or around December 2018. The rent due by the tenants was £450 per month. He received the first month's rent of £450 in December 2018, which payment came via the letting agent.
- [6]** In January 2019, the letting agent contacted him and advised that the tenants did not wish to deal with the letting agent because there had been a delay in effecting a repair to the property. He was advised that the tenants wished to deal with him directly. He attended at the property in January 2019 to meet the tenants. He met with the Respondent's husband, who confirmed that he wanted to deal directly with him, rather than through a letting agent. Mr Beg agreed to that. The Respondent's husband advised him that payment of rent would be made directly to him. He received the rental payment for January by bank transfer. No further rental payments were received by any method from the tenant or her husband.
- [7]** His letting agent contacted him in January 2019 to advise that he should provide the tenant with a tenancy agreement. He prepared a tenancy agreement and took that to the property. The Respondent's husband advised that the tenancy should run in the name of the Respondent only. No particular reason was given

for this, but Mr Beg understood that the Respondent wanted to build her credit score because she had just moved to the UK from Norway.

- [8] In January 2019, he advised his lender that he was no longer residing at the property and that the property had been rented out. He was advised by his lender that he could not do so because he did not have a buy to let mortgage. As a result of that, Mr Beg hand delivered a letter to the Respondent's husband in January 2019, advising that the Respondent would need to leave the property. When he delivered the letter, he spoke to the Respondent's husband who told him that there was no difficulty in them leaving because the Respondent had bought a property. He told the Respondent's husband to post the keys through the letterbox as he had another set and could let himself in.
- [9] Although he could not recall the date, Mr Beg travelled to Scotland approximately 18 months later to visit family and whilst in Scotland, he attended at the property. He found that the locks had been changed and the property was occupied. The Respondent's husband told him that he and the Respondent were still living in the property because the house they had purchased was still tenanted and not vacant. Mr Beg was surprised to find that the Respondent and her husband were still living there.
- [10] He started sending text messages to the Respondent's husband. He referred to Applicant's production 3, which was a series of messages between him and the Respondent's husband. The messages were partly in English and partly in Urdu. In response to inquiries from the Tribunal, Mr Beg noted that some messages refer to "Tennant Nawaz" and that he understands Nawaz is another one of Mr Sharif's names and that is how he sometimes referred to him. The messages started on 8 January 2021 and covered a period to December 2021, with Mr Beg advising the Respondent's husband that they (Mr Beg's lenders) were demanding £14,300. At that point, the Respondent's husband was in Dubai and told Mr Beg that he could not get back to the UK. Mr Beg told him that he had to speak to him. The Respondent's husband said that he would be back in the UK on 9 February 2021. Further messages were exchanged and the Respondent's husband asked Mr Beg to send a notice to him, following which the Respondent and her family would leave the property. Mr Beg asked for payment of arrears and said that if rent was paid, the family could continue to reside in the property. He was advised that the Respondent was in Turkey and her husband was in Dubai.
- [11] During the period that the text messages were exchanged, Mr Beg did not receive any payment from the Respondent or her husband in respect of rent. He took informal advice to send a termination notice to end the tenancy. That notice was sent on 6 December 2021. He understood that the Respondent was aware of the level of rent arrears.

- [12] He sent an email to the Respondent on 21 February 2022, attaching details of rent arrears and requesting payment. No response was received. He sent a further demand for payment of £16,650 on 1 March 2022. No response was received.
- [13] The arrears of rent now amount to £17,560. He has never received any payments of rent by cash. The only payments of rent received by Mr Beg were in December 2018 via the letting agent and in January 2019 by bank transfer. No payments of rent were made to Mr Beg's father, as claimed by the Respondent in an email dated 5 May 2022 addressed to the Tribunal. His father was named as his agent in the Tenancy Agreement and the respondent would have had contact details but did not collect rent. Mr Beg delayed proceedings until recently because he never expected the tenant to still be in the property and had focussed on trying to persuade her and her husband to move on. He could not easily travel back and forwards from England during a large part of the period in question, though he eventually returned to live in Scotland in early 2021. He had no requests for any repairs on the property after the initial issue with a water leak in late 2019. His father had advised him on taking action on the unpaid rent and found him a solicitor.

Submissions

- [14] In light of the evidence and in the absence of documentation lodged to contradict the Applicant, the Tribunal was invited to make an order for payment in the increased sum of £17,560 with interest in terms of Rule 41A of the 2017 Regulations. The Applicant remains the owner of the property and he is entitled to payment of the rent due in terms of the tenancy agreement.
- [15] Miss Donnelly noted that at the case management discussion on 14 March 2022, the Respondent's husband admitted that rent had not been paid after October 2021. It was submitted therefore that there could be no dispute that there was a tenancy agreement. The dispute was whether rent had been paid from March 2019 to October 2021. It was noted that the Respondent had failed to comply with the Notice of Directions issued by the Tribunal dated 14 March 2022 and no details have been given by the Respondent about the cash payments said to have been made.
- [16] In the text exchange the Applicant had with the Respondent's husband, there was no mention that the Respondent had made any payments of rent, despite being asked to pay rent by the Applicant. Likewise, when the Applicant sent emails in February and March 2022 demanding payment, there was no response from the Respondent to indicate that payment had been made or that the rent arrears statement was inaccurate. An up to date rent statement has been lodged, evidencing the extent of the rent arrears.

[17] Although most of the communication was between the Applicant and the Respondent's husband, he had ostensible authority to correspond on behalf of his wife. Indeed, he had represented his wife, the Respondent, at the case management discussion on 14 March 2022.

Findings in Fact

[18] The parties entered into a private residential tenancy dated 19 January 2019.

[19] The rent due by the Respondent in terms of the tenancy agreement was £450 per month.

[20] From March 2019 to date, the Respondent has failed to pay the rent due in terms of the tenancy agreement.

[21] The rent statement lodged on 5 May 2022 accurately reflects that the rent arrears due by the Respondent amounted to £17,560.

Reason for Decision

[22] The Tribunal proceeded on the basis of the documents lodged in support of the application, the evidence of the Applicant and the submissions made on his behalf. In relation to the preliminary matter raised on behalf the Respondent, the Tribunal allowed the sum sued for to be amended to £17,560. The Tribunal noted that at the case management discussion, there was an admission that rent was due and in fact there was a claim that the Respondent paid rent for the first year of the tenancy by bank transfer. It was noted that the Respondent failed to comply with the Notice of Directions issued on 14 March 2022. There was therefore no documentary evidence before the Tribunal to support the assertion that payments were made by bank transfer for a year. The Respondent failed to take part in the Hearing and was not represented. Although most of the contact regarding the tenancy was between the Applicant and the Respondent's husband, he had ostensible authority to represent the Respondent's position in respect of the tenancy. The Tribunal found the Applicant to be a credible witness and was satisfied that the rent statement lodged accurately reflected the rent due by the Respondent. There were two issues for the Tribunal to determine, namely:-

(a) Did the Respondent pay rent to the Applicant for the period 1 March 2019 to 31 October 2021?; and

(b) Is the Respondent liable to continue paying rent notwithstanding the service of a notice by the Applicant's lender?

[23] The Tribunal was satisfied, on the basis of the documents lodged and evidence led, that the Respondent failed to pay rent to the Applicant for the period 1 March 2019 to 31 October 2021. The Applicant remains the proprietor of the property. Any issue that the Applicant has with his lender in respect of his

mortgage account does not alter the contractual obligation the Respondent has to pay rent.

[24] The Tribunal observed that the debt due by the Respondent is substantial and has been outstanding for a considerable time. The Tribunal exercised its discretion and awarded interest on the sum due at the rate of 3% per annum from today's date 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.

N. Irvine

Legal Member/Chair

10 May 2022

Date