



**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/18/1639

**Re:** 7/27 Arneil Drive, Edinburgh, EH5 2GN (“the Property”)

**Parties:**

**Places for People Scotland, 1 Hay Avenue, Edinburgh, EH16 4RW (“the Original Applicant”)**

**Telford NHT 2011 LLP, c/o TC Young Solicitors, Melrose House, 69a George Street, Edinburgh, EH2 2JG (“the Substituted Applicant”)**

**Ms Clare Austin, 2 High Street, South Queensferry, EH30 9PP (“the Respondent”)**

**Tribunal Member:**

**Pamela Woodman (Legal Member)**

**Present:**

The case management discussion in relation to case reference FTS/HPC/CV/18/1639 took place in room D8, George House, 126 George Street, Edinburgh, EH2 4HH at 10.00am on Monday 18 February 2019 (“**the Third CMD**”). Both the Original Applicant and the Substituted Applicant were represented at the Third CMD by Nicola Caldwell (“**Ms Caldwell**”) of TC Young Solicitors (“**the Applicant’s Representatives**”). The Respondent was not present, nor was she represented, at the Third CMD. The clerk to the Tribunal was Rebecca Forbes.

**Decision (in absence of the Respondent)**

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

**BACKGROUND**

1. An application was 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 first case management discussion was held on 5 October 2018 (“**the First CMD**”), at which the Original Applicant was represented by Hayley Swanson of the Applicant’s Representatives and the Respondent was present in person. The legal member presiding over the First CMD issued notes on the case management discussion (“**the First CMD Notes**”).
3. The First CMD Notes recorded that, following a discussion between Ms Swanson and the Respondent during a short adjournment, they had “come to an agreement regarding payment of the sum due. The Tribunal had no involvement in these discussions but was advised that a payment had been made today in the sum of £125.15 and a standing order had been set up to pay £100 a month starting 1 November 2018.”
4. The Legal Member noted that there was no explicit statement in the First CMD Notes as to the “sum due” but the notes recorded that the Original Applicant “would drop their claim for property repairs and would restrict rent arrears they were seeking to the sum of £3,625.15 which was the amount due at the end of August 2017.” It was also recorded in the First CMD Notes that the “Respondent advised she had moved out on 20 August 2017 and had witnesses who could confirm that the Applicants knew this.”
5. A second case management discussion was held on 23 November 2018 (“**the Second CMD**”) and the notes of the Second CMD state that Neil Mathieson of the Applicant’s Representatives “confirmed that payments were being made as agreed by the respondent and requested a further Case Management Discussion be fixed for approximately three months time”.
6. The “further Case Management Discussion” was the Third CMD.

#### **PRELIMINARY ISSUE – IDENTITY OF APPLICANT PARTY**

7. Prior to the Third CMD, the Legal Member had requested a copy of the title documentation for the Property from the Tribunal. She was provided with a copy of the registered title in respect of title number MID145559, which related to 7, 8, 9 and 10 Arneil Drive, Edinburgh. The registered proprietor was noted as Telford NHT 2011 LLP, defined as “the Substituted Applicant” above.
8. The Legal Member noted that, in the tenancy agreement:
  - a. Telford NHT 2011 LLP was stated to be the landlord; and
  - b. the Original Applicant was stated to be the landlord’s agent.

9. Accordingly, the Legal Member asked the Tribunal to request evidence from the Applicant's Representatives that the Original Applicant owned the Property.
10. In response to this request being made to the Applicant's Representatives, the Applicant's Representatives intimated to the Tribunal (by e-mail on 8 February 2019) that they would be seeking to amend the designation of the party named as the applicant at the CMD and that they had written to the Respondent advising her of their intentions in that regard. A copy of the correspondence received by the Tribunal in this respect was also sent to the Respondent by the Tribunal on 12 February 2019.
11. The Applicant's Representatives provided confirmation to the Tribunal that they had authority to represent the proposed substitute applicant, Telford NHT 2011 LLP.
12. The request to amend the applicant in this case from the Original Applicant to the Substituted Applicant was also made orally at the Third CMD.
13. Given that (a) the person which the Applicant's Representatives proposed to substitute as the applicant in this case (i.e. Telford NHT 2011 LLP) for the Original Applicant (i.e. Places for People Scotland) was both the person named as the landlord in the tenancy agreement and the registered proprietor of the Property and (b) the proposed substitution had been intimated to the Respondent in advance of the CMD, the Legal Member allowed the substitution of the Substituted Applicant for the Original Applicant as the applicant in this case. Accordingly, the Substituted Applicant (i.e. Telford NHT 2011 LLP) was now the applicant in this case.

#### **PROCEEDINGS, NAMELY THE THIRD CMD**

14. Ms Caldwell confirmed that:
  - a. she was not aware of any change of address for the Respondent and, as far as she was aware, the address used by the Tribunal to intimate the date, time and place of the Third CMD was still the current address for the Respondent;
  - b. the Respondent had failed to make the payment of £100 due on 1 February 2019;
  - c. she was seeking, on behalf of the Applicant, an order for payment against the Respondent in the sum of £3,200, being the amount currently outstanding from the Respondent; and
  - d. there had been no communication to or from the Respondent to query or explain why the February 2019 payment had not been made.
15. Ms Caldwell provided a schedule which indicated that the total sum claimed (as agreed at the First CMD) was £3,625.15, of which £425.15 had been paid and so £3,200 was outstanding.

16. The rent arrears schedule provided with the original application paperwork detailed arrears of £3,625.15 as at 1 August 2017. The Legal Member noted that this figure appeared to include the rent due in advance for the month of August 2017.

#### **FINDINGS IN FACT AND REASONS FOR DECISION**

17. The Legal Member was satisfied that it was implicit from the First CMD Notes (including the reference to the first payment from the Respondent towards the arrears being £125.15 and future payments being in the amount of £100 each) that the Respondent had accepted that the "sum due" was £3,625.15.

18. The Legal Member was satisfied, on the balance of probabilities, that the Respondent had paid £425.15 towards the "sum due" and so the outstanding arrears of rent were £3,200.

#### **DECISION**

19. The Tribunal decided that an order be granted in favour of the Substituted Applicant against the Respondent for payment of the sum of £3,200 (three thousand two hundred pounds) sterling.

20. The order referred to in the preceding paragraph was intimated orally to Ms Caldwell during the CMD.

#### **Right of Appeal**

**In terms of Section 46 of the Tribunals (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.**

**Pamela Woodman**  
**Legal Member**

18.2.19  
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**Date**