



**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/19/3823

Re: Property at 31 Broomhall Gardens, Edinburgh, EH12 7QA (“the Property”)

Parties:

**Mr Stuart James Ferguson, Ms Rebecca Ferguson, C/o DJK Lettings and
Property Management, 21 Fowler Terrace, Edinburgh, EH11 1DB (“the
Applicant”)**

Mr Gavin Murphy, 6 Etrick Court, Grangemouth, FK3 9LA (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for payment for the sum of £2,989.04 plus
interest at the contractual rate of 8% should be granted in favour of the Applicant
by the Respondent.**

Background

1. The Applicant lodged an application on 27th November 2019 under Rule 70 of the Tribunal’s rules for an order for payment in respect of rent arrears of £2,989.04 with interest at the contractual rate of 8% against the Respondent.
2. A previous case management discussion (CMD) to discuss the issues in the above application took place on 6th March at 11.30am in the Riverside House 502 Gorgie House, Edinburgh EH11 3AF. The Applicant was represented by Mr McCall of Gilson Gray solicitors. The Applicants did not appear in person. The Respondent did not attend during the duration of the CMD however shortly after it was finished the Tribunal discovered the Respondent had in fact arrived at the venue in time for the CMD but neither the clerk to the Tribunal or the Legal Member were made aware of his presence. The

Respondent indicated to the clerk that he had submissions he wished to make and did not have an opportunity to do so.

3. The Tribunal had made a determination under S 16 of the Housing (Scotland) Act 2014 (“the Act”) and intimated it to the Applicants representative orally and produced a statement of reasons for the decision which is referred to for its terms (‘the first decision’).
4. However given the decision was made in the absence of the Respondent and the Respondent had not able to participate in the CMD due to no fault of his own the Tribunal decided at its own instance to review the decision.
5. Given the overriding objective and the inability of the Respondent to have been able to participate in the Case Management Decision on 6th March the Tribunal concluded that it was wholly in the interests of justice that the decision was recalled and a new CMD scheduled to which both parties would be invited. A note of the Decision on Review was issued on 9th March 2020.
6. The Tribunal also noted in its decision on review that if the Respondent wished to lodge anything, including any application for time to pay he should do so at least 14 days prior to the next CMD or if the Respondent did not wish to attend in person he should send his written representations to the Tribunal office.
7. This is the decision from the second CMD which was scheduled to take place by teleconference due to Covid 19 and the current requirements for social distancing. It was scheduled to take place by teleconference at 14.00 on 21st July 2020 and both parties were advised of the date and call in details by letter dated 25th June 2020. The Respondent’s letter was sent recorded delivery and was signed for. The Applicant’s letter was sent to their representative by e-mail.

- **The Case Management Discussion**

8. The following documents were lodged with the application and considered by the Legal Member of the Tribunal
 - i. A copy of the Short Assured Tenancy dated 18th January 2016 entered into between Mr Stuart Ferguson and Mr Gavin Murphy
 - ii. Copy rental statement from 14th December 2015 to 1st March 2019
 - iii. Property search showing Stuart Ferguson and Ms Rebecca Ferguson as joint owners of the Property.
 - iv. Landlord statement
 - v. Email from the Applicant’s Agent clarifying the application is to include the joint owner Ms Rebecca Ferguson as an applicant as she is the registered landlord, received 50% of the rent and acted as a joint landlord. .
9. Mr Scott Runciman of Gilson Gray solicitors attended on behalf of the Applicants today. The Respondent did not attend and was not represented.
10. Despite the recall of the original decision to allow the Respondent to make representations he made no written representations and the Tribunal delayed the start of the teleconference by 10 minutes to see if he joined. The Respondent did not attend.

11. The Tribunal being satisfied that the Respondent had been given adequate notice of the CMD proceeded in the absence of the Respondent.
12. The Convener made introductions and explained the purpose of the CMD which is to explore the issues and to determine whether a full hearing is required or not. The Convener confirmed that the tribunal can make any decision at a CMD that it can make after a full hearing.
13. Mr Runciman confirmed that the position remained the same as stated in the application namely that no rent had been paid by the Respondent for the months of September, December 2018 January, February and up to 17th March 2019 as set out in the rent statement submitted with the application. The Tenant had left the Property on 17th March 2019.
14. The Sum due and still outstanding was he submitted £2989.04 with interest at the contractual rate of 8% due in terms of the Section 3 of the lease.
15. It was noted the deposit of £1000 had been applied by the Applicants to the arrears of rent due in the statement provided.
16. Mr Runciman confirmed that his client had not received any further sums from the Respondent nor had he or his client received any communications from the Respondent since March 2020.

Findings in Fact

17. The parties entered into a lease of the Property which was dated and commenced on 18th January 2016.
18. The Rent due in terms of the lease is £875 per calendar month payable in advance
19. The tenant left the Property on 17th March 2019.
20. The rent outstanding at the date of the application namely 27th November 2019 was £3,989.04.
21. The Deposit of £1000 has been reclaimed by the Applicant and applied to the arrears leaving a balance due today of £2,989.04.
22. No further sums have been paid.
23. The lease provided for interest at 8% per annum on any outstanding sums.

• Reasons for Decision

24. The parties have entered into a lease where the Respondent has leased the property from the Applicant and has agreed to pay £875 per month in rent.
25. The Respondent has failed to pay the full rent due and in particular has not paid anything towards the rental sums in September and December 2019 and January to 17th March 2020 when the tenant left the Property.
26. No further sums have been paid.
27. The Applicants have claimed interest in their application and are entitled to this in terms of clause 3 of the lease.
28. The Tribunal accepts the written evidence and verbal statements made by the Applicant's agent, who the Tribunal found clear and credible in his evidence that the rent outstanding at the time of the application and today amounts to £2989.04. In the absence of any response from the Respondent the Tribunal finds it fair and appropriate to make an order for payment for that sum today.

29. There being no application for time to pay the Tribunal makes an order for payment of the sum claimed.

- **Decision**

- An order for payment of the sum of £2,989.04 plus interest at 8% from today's date is granted.

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.

Jan Todd

Legal Member/Chair

21st July 2020

Date