



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/20/1745

Re: Property at Igarah, Tandlehill Road, Kilbarchan, PA10 2DD (“the Property”)

Parties:

Mr Stewart Adams, Villa 23, Jumeriah Golf Estates, PO Box 214971, Dubai, United Arab Emirates (“the Applicant”)

Mr Brian John Wilson, Mrs Susan Catherine Wilson, Lotus Cleaning Services, 11-13 Erskine Square, Hillington, G52 4BJ; Lotus Cleaning Services, 11-13 Erskine Square, Hillington, G52 4BJ (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the Respondent in the sum of £4500.00.

Background

1. By application dated 17 August 2020 the Applicant’s representatives Kingsley Wood & Co, solicitors, Kilmalcolm applied to the Tribunal for an order for payment in respect of alleged rent arrears arising from the Respondent’s tenancy of the property. The Applicant’s representatives submitted a copy of a tenancy agreement and a rent schedule in support of the application.
2. By Notice of Acceptance dated 30 September 2020 a legal member of the Tribunal with delegated powers accepted the application and a Case Management discussion was assigned.

3. Intimation of the Case Management Discussion was sent to the Applicants representatives by post and was served on the Respondent by Sheriff Officers.
4. A Case Management Discussion was held by teleconference on 11 November 2020. The Applicant was represented by Mr Kingsley Wood. The Respondent did not attend. The Applicant's representative sought an adjournment to allow the final amount of rent said to be due to be ascertained and the application to be amended. It was noted that the Respondent had vacated the property.
5. Intimation of the adjourned Case Management Discussion was given to the Respondent at the Respondent's business address by Sheriff Officers.
6. By email dated 7 January 2021 the Applicant's representatives sought to introduce a new issue by amendment of the application and requested a postponement of the Case Management Discussion to allow intimation on the Respondent. The Tribunal refused the postponement request as it wished to be addressed on the proposed amendment.

The Case Management Discussion

7. A Case Management Discussion was held by teleconference on 11 January 2021. The Applicant was represented by Mr Kingsley Wood. Ms Caitlin Gillon. Trainee solicitor attended as an observer. The Respondent did not attend.
8. Mr Wood asked the Tribunal to allow the amended application to be served on the Respondent. The Tribunal indicated it had some concerns as regards the proposed amendment and referred Mr Wood to Rule 14(1) of the Tribunal Regulations and pointed out that any amendment that raised a new issue may only be made with the consent of the Tribunal. The Tribunal referred Mr Wood to the terms of Clause 2.3 of the tenancy agreement and suggested that it was not at all clear what was meant by "together with all losses and expenses incurred by the Landlord" in relation to the failure of the Respondent making payment of rent on the due date. The Tribunal also pointed out that from the terms of the invoices submitted with the amended application that the sums claimed might well include what were essentially the expenses of the current proceedings. The Tribunal explained that expenses were only awarded in exceptional circumstances.
9. The Tribunal also indicated that if any amendment was allowed then it would be necessary to intimate the amended application on the Respondent at their place of residence and not at a business address. Mr Wood confirmed that he had not obtained a current residential address for the Respondent. The Tribunal explained that in that case it would be necessary for him to instruct tracing agents in the first instance and if a negative trace was obtained then an application for service by way of advertisement could be made.
10. Following some further discussion Mr Wood asked the Tribunal to adjourn the Case Management discussion to allow him to further amend the application to

reflect the actual cost incurred by the Applicant in issuing notices to the Respondent as opposed to any legal expenses incurred as a result of making the application to the Tribunal. The Tribunal indicated that whilst it might be prepared to grant a further adjournment for that purpose it would be open to the Applicant to seek an order for the rent said to be due at this stage and then consider if he so wished making a further application for any additional sums that may be due in a separate application.

11. Mr Wood then asked the Tribunal to grant an order for payment by the Respondent in the sum of £4500.00. He confirmed the parties entered into a short assured tenancy agreement that commenced on 10 March 2015 at a rent of £1500 per month. He confirmed that as at the date the Respondent vacated the property namely 10 October 2020 the rent due was £6000.00 and that the Respondent's deposit of £1500.00 had been returned in full to the Applicant leaving a balance due of £4500.00.

Findings in Fact

12. The parties entered into a Short Assured Tenancy Agreement in respect of the property that commenced on 10 March 2015 and ended when the Respondent vacated the property on 10 October 2020.
13. The rent was £1500.00 per month.
14. After deduction of the deposit paid by the Respondent at the commencement of the tenancy the rent due by the Respondent to the Applicant amounted to £4500.00.

Reasons for Decision

15. From the information provided the Tribunal was not satisfied that it would be appropriate to consent to the proposed amendment sought by the Applicant's representative as it effectively sought to claim in part the expenses of the proceedings as a debt due by the Respondent.
16. The Tribunal was satisfied from the documentary evidence submitted as well as the oral representations made on behalf of the Applicant that the Respondent owed the Applicant £4500.00 in respect of unpaid rent arising from the Respondent's tenancy.
17. The Tribunal was satisfied it had sufficient information before it to make a decision without the need for a further hearing and that the Respondent had been given intimation of the original application and the sum claimed and had not made any representations to dispute that amount was due.

Decision

18. The Tribunal finds the Applicant entitled to payment by the Respondent in the sum of £4500.

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.

Graham Harding

**Graham Harding
Legal Member/Chair**

**11 January 2021
Date**