



**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/20/2484

**Re: Property at 43 Flinders Place, Westwood, East Kilbride, G75 8EZ (“the
Property”)**

Parties:

**Mr Craig Gibson, Mrs Pamela Gibson, 64 Strathwhillan Court, Hairmyres, East
Kilbride, G75 8FH (“the Applicants”)**

**Mr John James Cunningham, Mr David McCaig, 43 Bardykes Road, Blantyre,
G72 9QH; 43 Flinders Place, Westwood, East Kilbride, G75 8EZ (“the
Respondents”)**

Tribunal Members:

Richard Mill (Legal Member)

Decision (in absence of the Second Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an Order for Payment in the sum of Three Thousand
Six Hundred and Forty Five Pounds (£3,645) be granted against the Second
Respondent Mr David McCaig**

Introduction

This is an application under Rule 70 and Section 16 of the Housing (Scotland) Act 2014. The application seeks a Payment Order to recover arrears of rent due under an assured tenancy.

Service of the application and intimation of the Case Management Discussion (CMD) was effected by Sheriff Officers upon both of the respondents on 22 December 2020.

The CMD took place by teleconference on 10 February 2021 at 2.00 pm.

The applicants were represented by Miss Nicola Caldwell of Messrs TC Young Solicitors. The first respondent, Mr John Cunningham, joined the teleconference hearing and participated personally. The second respondent, Mr David McCaig, failed to join the teleconference hearing. There was no barrier to him doing so.

The first respondent, who is the alleged guarantor, stated a defence to the application. He stated that he had not guaranteed payments under the lease. He had not signed the relevant lease in this capacity. Miss Caldwell, for the applicants, was afforded an adjournment to take instructions on his stated position. When the Tribunal reconvened she advised that the first respondent's position was accepted and no order was being sought against him. She sought the Order against the second respondent only, who is the tenant.

Findings and Reasons

The property is 43 Flinders Place, Westwood, East Kilbride G75 8EZ.

The applicants, who are the landlords, and the second respondent, Mr David McCaig, entered into a short assured tenancy for an initial 6 months, which commenced on 4 May 2016. The tenancy has not been brought to an end and continues. This is an assured tenancy under the Housing (Scotland) Act 1988.

Rent was stipulated at a rate of £500 per calendar month.

The second respondent was believed to be the relevant guarantor. His challenge to this has been accepted on behalf of the applicants.

The application was accompanied by a formal rent statement. This discloses when all relevant payments of rent have fallen due since the commencement of the tenancy, together with rent payments received.

In the written application to the Tribunal the sum sought by way of Payment Order in respect of arrears of rent was £2,145. Rent payments have continued to fall due and are unpaid since the application was made. In terms of a formal Rule 14A amendment application made to the Tribunal on 20 January 2021, the sum sought by way of Payment Order was increased from £2,145 to £3,145. This reflected a further 2 months' rent falling due and being unpaid. The application was intimated to the respondents by recorded delivery post. At the hearing Miss Caldwell submitted a further up to date rent statement disclosing a further one months' rent was unpaid. The total outstanding had risen to £3,645. She moved to further amend the sum sought to this level under Rule 13 (2). This further amendment was allowed.

The applicants are entitled to recover arrears of rent lawfully due under and in terms of the lease. The second respondent is liable for payment of arrears of unpaid rent.

The Tribunal attached weight to the documentary evidence lodged in support of the application which was found to be credible and reliable, together with the applicants' representative's submissions which were unchallenged.

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.

Richard Mill

10 February 2021

Legal Member/Chair

Date