



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 71(1) of the Private Housing
(Tenancies) (Scotland) Act 2016**

Chamber Ref: FTS/HPC/CV/21/1433

Re: Property at 12 Lionbank, Kirkintilloch, Glasgow, G66 1PH (“the Property”)

Parties:

**Mr Stewart Wilson, Mrs Kathleen Wilson, 10 Thompson Avenue, Kirkintilloch,
Glasgow, G66 2BS (“the Applicants”)**

Mr Stuart Nairn, Unknown, Unknown (“the Respondent”)

Tribunal Members:

Sarah O'Neill (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 by the respondent of the sum of £4590 should be granted in favour of the applicants.

Background

1. An application was received on 10 June 2021 from the applicants' representative, R and G Estate Agents, Kirkintilloch, for a payment order brought in terms of rule 70 (Application for civil proceedings in relation to an assured tenancy) of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”).
2. The applicants were seeking payment of rent arrears of £4590 from the respondent in relation to the property, being the amount of arrears as at the date the application form was submitted. Attached to the application form were a rent statement for the period January 2020 - May 2021 and several

redacted bank statements showing payments received by the applicant's representative on behalf of the applicant from the respondent.

3. Further to a request from the tribunal administration, the following further documents were received from the applicant's representative on 30 July 2021:
 - i) copy private residential tenancy agreement between the parties commencing on 12 December 2019, which was unsigned and undated.
 - ii) updated rent statement showing the outstanding rent as at 29 July 2021 to be £5610.
4. The amount sought in the application was therefore £5610, as the updated rent statement was received before the application was accepted by the tribunal for determination on 24 August 2021.
5. A direction was issued by the tribunal on 15 September 2021, directing the applicant to: 1) confirm whether they wished to amend the application to state that it was made under rule 111, as the tenancy agreement between the parties was in fact a private residential tenancy agreement; 2) provide copies of any letters or notices sent to the respondent regarding the outstanding rent arrears; and 3) confirm the current outstanding sum due by the respondent, and provide an updated rent statement.
6. A response was received from the applicants' representative by email on 29 September 2021. Attached to the email was an updated application form, stating that the application was being made under rule 111, and that the amount sought was £5610. Also attached was a further copy of the rent statement received on 30 July 2021, showing the outstanding rent arrears to be £5610.
7. The application papers, together with notice of the case management discussion (CMD) scheduled for 6 October 2021, were served on the respondent by sheriff officer on behalf of the tribunal on 8 September 2021. No written representations or time to pay application were received from the respondent prior to the first CMD.

The first CMD

8. A case management discussion (CMD) was held by remote teleconference call on 6 October 2021. Neither party was present or represented on the teleconference call. The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a CMD had been duly complied with in relation to both parties. It therefore proceeded with the CMD in their absence. The tribunal decided that the application should be amended to state that the application

was made under rule 111 of the 2017 rules. The tribunal also decided to adjourn the CMD to a later date to give the parties a further opportunity to attend.

9. The tribunal also issued a further direction to the applicants on 6 October 2021, asking them to: 1) confirm whether they wished to continue with the application or withdraw it; 2) provide a signed copy of the tenancy agreement between the parties; and 3) provide copies of any letters or notices sent to the respondent regarding the outstanding rent arrears.
10. A response was received from the applicants' representative by email on 14 October 2021, confirming that the applicants wished to continue with the application. With regard to the tenancy agreement, the email stated that both parties had signed this, but that the server used by the applicants' representative had crashed in June 2020 and unfortunately the signed agreement had been lost from their files. Therefore, the only copy of the tenancy agreement which remained was the unsigned copy which had been sent to the respondent by email on 11 December 2019, the day before the tenancy commenced.
11. The postponed CMD was arranged for 16 November 2021. Unfortunately, it became apparent prior to that date that the notice of the CMD which had been sent to the respondent by recorded delivery had not been delivered. The CMD was therefore cancelled. The applicants' representative confirmed on 23 November 2021 that the respondent had abandoned the property. An application for service by advertisement was received from the applicants' representative on 8 December 2021. Notification of the rescheduled CMD on 20 January 2022 was served by advertisement on 17 December 2021, and an email was sent to the respondent on the same date alerting him to the notice which had been published on the Housing and Property Chamber's website.
12. No written representations or time to pay application were received from the respondent prior to the postponed CMD on 20 January 2022.

The postponed CMD

13. A postponed case management discussion (CMD) was held by remote teleconference call on 20 January 2022. Mr Garry McNulty, Director of R and G Estate Agents, represented the applicants on the teleconference call. The respondent was not present and were not represented. The tribunal had before it a certificate of service of advertisement confirming that details of the date and time of the CMD appeared on the Housing and Property Chamber's website from 17 December 2021 until 19 January 2022.

14. The tribunal delayed the start of the discussion by 10 minutes, in case the respondent had been detained. He did not appear, however, and no telephone calls or messages had been received from him.
15. The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a CMD had been duly complied with. It therefore proceeded with the CMD in the absence of the respondent.
16. Mr McNulty told the tribunal that his colleague, who was more familiar with the details of the case, had been due to attend the CMD, but was off sick. He was able to confirm that the respondent had vacated the property at some point before early December 2021. The tribunal later noted that a written note which appeared to have been taken from R and G Estate Agents' files dated 26 August 2021, which was produced to the tribunal by Mr McNulty during the CMD suggested that the property was empty as at that date. This was later confirmed in an email received from the applicants' representative on 25 January 2022.
17. The tribunal notes that it is therefore likely that the respondent did not receive the papers for the original CMD which were served on him at the property on 6 September 2021. The tribunal was, however, satisfied that the respondent had been given adequate notice of the postponed CMD, as discussed at paragraphs 11 and 15 above.
18. Mr McNulty confirmed that no further payments had been received from the respondent since the application was made. He said that the respondent had been difficult to contact for some time before he vacated the property. He confirmed that the applicant sought an order for £5610 and did not wish to pursue the additional arrears which had accrued after 29 July 2021 until the respondent vacated the property.
19. He also confirmed his belief that, although the tenancy agreement stated that a tenancy deposit of £510 was to be paid by the respondent, this had never in fact been paid. Following the CMD, the tribunal administration wrote to the applicant's representative at the tribunal's request, seeking to clarify this point. The tribunal noted that the rent statement before it showed that no deposit was paid in January 2020. However, the entry for September 2020 showed that a payment of £2040 was made, with £1530 of this to go towards the rent arrears and the remaining £510 was in respect of a deposit.
20. The tribunal also noted that the unpaid deposit appeared to have been included in the initial outstanding arrears figure in January 2020, which was

shown to be £1020, broken down into £510 for unpaid rent and £510 in respect of the unpaid deposit. That £510 then appeared to be included in the arrears total from January 2020 onwards, even though the deposit was paid in September 2021. This sum did not appear to have been deducted from the overall arrears figure at the time when the deposit was paid. The tribunal therefore sought confirmation from the applicant's representative as to the position with regard to these two points.

21. An email was received from the applicants' representative on 25 January 2022, confirming that the respondent had paid a deposit of £510, which had been paid into an approved tenancy deposit scheme. The deposit had been returned in full to the applicants on 18 October 2021. An updated rent statement was attached, showing the outstanding arrears as at 18 October 2021 to be £5100. Following a further query from the tribunal on 26 January 2022 as to whether the deposit sum had been included in the overall outstanding arrears, a further email was received from the applicants' representative on the same date. This confirmed that the deposit sum had not been subtracted from the arrears owed when the deposit had been paid, and that the correct arrears figure was therefore in fact £4590.
22. The tribunal chairperson asked Mr McNulty at the CMD whether he was able to produce any letters or emails sent to the respondent to show that he had been notified of the outstanding arrears. She noted that the tribunal had directed the applicant to provide this information in both of its directions, but nothing had been received. The tribunal adjourned the CMD for a short time to allow Mr McNulty to obtain this information from a colleague. He sent through to the tribunal a number of emails from the applicant's representative to the respondent dated between 11 December 2020 and 16 July 2021. He advised that there had also been numerous attempts to contact the respondent by telephone.
23. The tribunal noted that some of the emails sent did not specifically refer to the rent arrears, but requested that the respondent contact the applicants' representative, as they had been unable to get through to him on the phone. There was, however, an email dated 10 June 2021, which referred to an attached rent statement and stated that a total of £4590 in arrears was outstanding. There was also an email dated 14 July 2021 to the respondent, referring to an attached notice to leave. The respondent had replied on 16 July 2021, admitting that the rent had not been paid, and saying that he was now in a position to pay back the money owed at a rate of £1500 per month.
24. The tribunal noted that the applicant's representative did not appear to have written to the respondent regularly regarding the arrears, and had not sent

him pre-action requirement letters despite having served a notice to leave. It did appear, however, from the correspondence provided that the respondent was aware that he owed rent arrears to the applicants and admitted that these were due.

Findings in fact

25. The tribunal made the following findings in fact:

- The applicants are the joint owners of the property. Mrs Wilson is the landlord named in the private residential tenancy agreement between the parties. Mrs Wilson is the registered landlord of the property, with Mr Wilson named as a joint owner.
- The private residential tenancy between Mrs Wilson and the respondent commenced on 12 December 2019.
- The rent payable under the tenancy agreement was £510 per month, payable in advance on the 12th day of each month.
- The respondent had paid a tenancy deposit of £510 in September 2020. This was returned in full to the applicants after the end of the tenancy.
- The applicants' representative had sent numerous letters to the respondent advising him that he was in rent arrears.
- As at the date of the CMD, the respondent owed the applicants the sum of £4590 in rent arrears.

Reasons for decision

26. On the basis of all the evidence before it, the tribunal was satisfied that the respondent owed £4590 to the applicants as at the date of the CMD, and that he had been notified that this sum was due by the applicants. The tribunal therefore decided to make an order for payment by the respondent to the applicants of that sum.

Decision

The tribunal grants an order for payment by the respondent to the applicants for the sum of £4590.

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.

S. O'N

Legal Member/Chair

1 February 2022

Date
