

Housing and Property Chamber
First-tier Tribunal for Scotland



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/19/2951

Re: Property at 3 Princes Gate, Bothwell, G71 8SP (“the Property”)

Parties:

Mr Archibald Gilchrist, Mrs Mary Gilchrist, 22a Wellhall Road, Hamilton, ML3 9BG (“the Applicants”)

Mrs Elaine O'Donnell, Park Quadrant Residences, 12 Park Quadrant, Flat 16 - Top Left, Glasgow, G3 6BS (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment of the sum of NINE THOUSAND NINE HUNDRED AND FORTY FOUR POUNDS AND ELEVEN PENCE (£9944.11) STERLING. The order for payment will be issued to the Applicants after the expiry of 30 days mentioned below in the right to appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.

Background.

1. By application dated 18 September 2019 the Applicants' solicitor applied to the Tribunal for an order for payment of rent arrears for £8800 against the Respondent and her husband relating to a tenancy of the Property, The application was accompanied by a rent statement to 14 September 2019.
2. After an enquiry from the Tribunal requesting a copy of the tenancy agreement, the Applicant's solicitor explained that the Model Private Residential Tenancy Agreement had been sent to the Respondents but only the signing page had been returned and as such they did not have a copy of

the full written tenancy agreement. A copy of the signed last page by both Respondents dated 14 June 2019 was lodged with the Tribunal.

3. On 28 October 2019 the Tribunal accepted the application. On 30 October the Applicants' solicitors advised the Tribunal that the Respondents had vacated the Property and were making enquiries to establish the forwarding address of the Respondents. On 29 November 2019 they advised that they had been unable to trace the current whereabouts of the Respondents and accordingly requested that the application be served by advertisement in terms of Rule 6A of the First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations").
4. The Tribunal thereafter proceeded to serve the application by way of advertisement and a Case Management Discussion ("CMD") was assigned for 24 January 2020.
5. On 6 January 2020 the Applicants' solicitors requested the sum sought be amended in terms of Rule 14A of the Regulations to £9944.11. This request was added to the case file and papers by the Tribunal administration.
6. Further the Applicants' solicitors advised on 6 January 2020 that the Respondents' whereabouts had been traced to Park Quadrant Residences, 12 Park Quadrant, Flat 16 - Top Left, Glasgow, G3 6BS. Thereafter the CMD assigned for 24 January 2020 was postponed in order to allow the application to be served on the Respondents.
7. On 14 February 2020 the Tribunal enclosed a copy of the application and relevant paperwork and invited the Respondents to make written representations by 6 March 2020. The Tribunal also advised that a CMD would proceed on 17 March 2020. This paperwork was served on the Respondent on 17 February 2020 by David Dempster, Sheriff Officer, Glasgow. Mr Dempster reported that he had served the application personally on the Respondent, that she was moving out of the address at Park Quadrant Residences the next day, that she had no fixed abode and was declaring herself homeless with the Council. She also advised Mr Dempster that her husband resides in London and they were no longer in contact.
8. On 9 March 2020 the Applicants' solicitors intimated to the Respondent that they were withdrawing the application against her husband in terms of Rule 15A of the Regulations. They advised that they were proceeding with the Application against the Respondent only. They provided the Tribunal with a copy of a letter dated 9 March 2020 addressed to the Respondent.
9. On 16 March 2020 the Respondent submitted a Time to Pay Application which was signed and dated 20 February 2020. She also advised that she would be unable to attend the CMD on 17 March 2020 due to illness.

Case Management Discussion

10. The CMD proceeded on 17 March 2020. Miss Caldwell, solicitor appeared on behalf of the Applicants. There was no appearance by or on behalf of the Respondent.
11. The Tribunal had before it the application, a rent statement to 14 September 2019, a copy of the signed last page of the tenancy agreement and the Respondent's Time to Pay Application.
12. The Tribunal noted that the Respondent had stated she was unable to attend due to illness. The Tribunal noted that the Respondent had not supplied a soul and conscience certificate. The Tribunal had before it the Respondent's representations in the Time to Pay application. The Tribunal was satisfied the Respondent had been given notice of the CMD and that the requirements of Rule 24(1) had been met and accordingly proceeded with the CMD on the representations of the Applicants' solicitors and all material before it including the representations made by the Respondent in her Time to Pay Application.
13. Miss Caldwell explained that the Respondent and her husband had left the Property by handing in the keys on 25 October 2020. The sum sought by way of amendment was the figure due in arrears to that date with an additional sum of £1144.11 due between 14 September 2019 which was when the rent statement was taken to and 25 October 2019 when the Respondent and her husband vacated the Property. In the circumstances the Tribunal was prepared to increase the sum sought to £9944.11 being the amount of arrears to 25 October 2020.
14. Miss Caldwell explained that only one payment of rent had been made of £2800 on 2 July 2019. In terms of the tenancy agreement the monthly rent was £2900. Although she did not have specific information she submitted that it appeared the tenancy had started on 14 June 2019 as per the signed last page of the tenancy agreement which had been sent to the Respondent and her husband to sign.
15. She submitted that with reference to the Respondent's representations in the Time to Pay application there was no dispute the Respondent had signed the tenancy agreement, no dispute that there was an agreement to pay the rent or the amount of rent due under the application. She explained that the liability for rent under the tenancy agreement was joint and several and that in the circumstances she was looking for an order for payment.

Findings in Fact

16. The Applicants and the Respondent and her husband had entered into a Private Residential Tenancy Agreement for the Property. The tenancy agreement had been signed by the Respondent and her husband on 14 June 2019.

17. Under the tenancy agreement the Respondent and her husband had agreed to pay a monthly rent of £2900 to the Applicants. They had only made one payment of £2800 on 2 July 2020. No other rent had been paid.

18. Arrears were £9944.11 as of 25 October 2019 when the Respondent and her husband vacated the Property.

Reasons for Decision

19. In terms of Rule 14 A of the Regulations, the Tribunal being satisfied that the request to seek amendment of the sum sought to be increased and that Respondent had had intimation of the request to amend with the application after being served with the application on 17 February 2020, the Tribunal allowed the Applicants to amend the sum sought to the higher figure of £9944.11. The Applicants' solicitor made submissions as to the content of the tenancy agreement including the amount of rent due and when the tenancy agreement had terminated and had provided evidence of non-payment of rent by way of the rent statement. The Tribunal also note that the Respondent admitted she had signed the tenancy agreement and that she felt she should not be liable as she was not working when she has signed the tenancy agreement. The Tribunal was satisfied on the basis of the oral submissions from Miss Caldwell and on the basis of the contents of the representations made by the Respondent in the Time to Pay Application that an order for payment be made.

Decision

20. The Tribunal granted an order for payment for £9944.11.

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.

Mrs Shirley Evans

Legal Member/Chair

17/03/2020

Date