

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 rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

Case Reference Number: FTS/HPC/CV/19/2682

Re: 124 North Road, Bellshill, ML4 1EX (“the property”)

Parties:

Abdul Majid, Shagufta Majid, Nadia Nihmra Majid and Sonia Shama Shagufta Majid, as partners of the firm “Spar Store & Post Office”, 120/122 North Road, Bellshill, ML4 1EX

(“the Applicant”)

Excel Letting, 26 Cadzow Street, Hamilton, ML3 6DG

(“the Applicant’s Agents”)

James Cairns, current address unknown

(“the Respondent”)

Tribunal Members

Adrian Stalker (Legal Member), Helen Barclay (Ordinary Member)

Decision (in absence of the respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the sum sought by the applicant, being £4,597.81, was lawfully due by the respondent, and granted an order for payment of that sum, by the respondent, to the applicant.

Background

1. This is an application under rule 111 of the schedule to the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Procedure Rules”), in which the applicant seeks an order for payment against the respondent, in the sum of £4,597.81, being rent arrears.

2. Reference is made to the notes of the CMDs which took place on 22 October 2019, and 24 July 2020, and the note of the adjourned hearing which took place, on 18 September 2020. As is apparent from the last of those notes, the Tribunal fixed a

further adjourned hearing, at a date to appointed. Subsequently, a hearing was fixed to take place, by teleconference call, on 6 November 2020, at 10am.

3. Paragraph 17 of the note of 18 September states:

Ms Smith [of Excel] confirmed that she will, in advance of the next hearing, copy all of the material in Excel's file, including notes of conversations, messages sent by text or email, showing or tending to show that the respondent was occupying the property as tenant. The Tribunal is particularly interested in seeing any record of contact in which the respondent accepts a liability to pay rent, or admits that there are arrears outstanding.

4. On 3 November, the applicant's agents submitted certain documents to the Tribunal, as attachments to an email.

5. These documents comprise:

- (a) letters from Excel to the respondent dated 14 May, 2 July and 23 August 2019;
- (b) emails from Excel to the respondent dated 8 May and 2 July 2019;
- (c) a record of a "routine inspection report" on 7 July 2019;
- (d) a print out of the records of communication between Excel and the respondent, including telephone conversations, notes of conversations which took place at the tenancy property, and text messages.

6. The letter of 14 May and the email of 8 May inform the respondent that the applicant has transferred the management of the tenancy to Excel. These communications proceed on the basis that the respondent is the tenant of the property. They also state that the respondent is in arrears of rent, and ask him to make arrangements to pay. Both the letter and email of dated 2 July state that the respondent's "rent account is in arrears", state the amount (and how it has been calculated), and give information as to how payment may be made to Excel.

7. The following entries appear in the print out (see para 5(d) above):

- (a) [6 August 2019, sent to the respondent's mobile number]:
Hi, Just a reminder I will be carrying out your routine inspection tomorrow between the hours of 10am and 2pm. Kind Regards Excel Sales & Letting T replied at 9.44am on 07/08: Hi there I will be available from half 10 to 12 today thanks.
- (b) [8 August, sent to Abdul Majid]:
Hi Mr Majid, Please find attached a copy of the routine inspection report following yesterday's inspection. It was difficult to report on what I saw as we had not received the inventory showing us the condition of the property when the tenant moved in. The property was in a bit of disarray and required

cleaning however the tenant advised this was due to moving on the 11th August. The tenant explained that he had had a conversation with your wife advising that he was making a payment arrangement with you for his arrears. I advised him that we were now dealing with the management of the property and asked him to call our office to make arrangement for this, he advised he would call in half an hour however we are now in the following day and have not received a phone call yet. The tenant advised that he has bought another property and just when it was about to conclude something showed up which showed dampness and therefore his mortgage lender pulled back until this was sorted. He advised me that he was paying for his new mortgage and waiting for it to settle and this was his reason for not being able to pay his rent, that is what the tenant told me. We will keep you posted of any updates. Kind Regards Helen.

(c) [On 19 August]

James Cairns...left message on answer machine at 8.39am this morning to let us know he will return keys on Wednesday as he's had a hard time trying to empty the property. He also said he spoke to the owner regarding the arrears and he will arrange to pay these off over 3/4 months.

8. The remaining letters and communications concerned the arrangements for return of the keys. In particular, the entry for 6 September 2019 states: "L/L called to say keys were handed into shop front counter last night."

Adjourned Hearing

9. The hearing duly took place, by teleconference call, on 6 November 2020. Ms Joanne Smith, letting agent, of Excel Letting, agents for the applicant, appeared on his behalf. Helen Smith also attended, as a witness for the applicant.

10. As at 10:10am, neither the respondent, nor any person appearing on his behalf, had entered the teleconference. Accordingly, the respondent did not appear, and was not represented, at the hearing. Because the current whereabouts of the respondent are unknown, service of notice of the hearing was by advertisement which appeared on the Service by Advertisement page of the website of the First-tier Tribunal for Scotland Housing and Property Chamber from the advertisement date (2 October) until 6 November 2020. The Tribunal members had sight of the certificate of service by advertisement. The respondent has not, at any time, played any active role in the proceedings relating to this application, or the eviction application. He made no representations to the Tribunal, in advance of either of the scheduled CMDs.

11. In the circumstances, the Tribunal was satisfied, under rule 29, that it was appropriate to proceed with the hearing, in the respondent's absence.

12. Ms Joanne Smith confirmed that she sought to amend the application such that

the applicants become: Abdul Majid, Shagufta Majid, Nadia Nihmra Majid and Sonia Shama Shagufta Majid, as partners of the firm “Spar Store & Post Office”, 120/122 North Road, Bellshill, ML4 1EX. This was anticipated in paragraph 19 of the note of 18 September 2020. The Tribunal allowed that amendment to be made.

13. The Tribunal then heard evidence from the witness Helen Smith, which was as follows:

- She is Ms Helen Smith, aged 53, currently unemployed, and residing at 17 Grace Wynd, Hamilton, ML3 6QH.
- She worked as a property assistant with Excel, from around February to October 2019.
- The witness then had a copy of the print out (see para 5(d) above) before her. She confirmed that this showed entries from Excel’s file.
- She recognised the entry which began “Hi Mr Majid” and ended “Regards Helen”. She made that entry.
- That entry was a copy of an email that she had sent to Mr Majid. It described what had happened, when she carried out an inspection of the property.
- The inspection took place on 7 July, not 7 August. That is consistent with the date on the document headed “routine inspection report”.
- The witness confirmed that the entry accurately described her discussion with the respondent.
- In carrying out an inspection, she would not normally raise the issue of rent arrears with a tenant. On this occasion, the respondent had raised the issue with her, unprompted.
- He explained that he had made an arrangement with Mrs Majid, Abdul Majid’s wife, in terms of which he was to pay of the arrears over a period of 3 or 4 months.

Findings in fact

14. On the basis of Helen Smith’s evidence, and the papers submitted by Excel, including a rent account, the Tribunal made the following findings in fact:

- i On 5 June 2018, the applicant let the property to Mrs Anne Cairns, under a private residential tenancy.
- ii At some point shortly thereafter, the respondent, her son, moved into the property.
- iii Mrs Cairns died, around 15 June 2018.
- iv Thereafter, the respondent continued to live at the property.
- v The applicant, the applicant’s then letting agents and the respondent, thereafter proceeded on the basis that the respondent had taken over the tenancy from Mrs Cairns.

- vi That was notwithstanding the fact that the applicant and the respondent did not enter into any tenancy agreement, and the respondent was not entitled to succeed to the private residential tenancy, under the succession provisions of the Private Housing (Tenancies) (Scotland) Act 2016.
- vii Subsequently, Mr Cairns made some payments of rent, but fell into arrears.
- viii With effect from May 2019, the applicant instructed Excel to act as letting agents.
- ix By email and letter in May and on 2 July 2019, Excel informed the respondent that his rent was in arrears, and asked him to make arrangements for payment.
- x On or about 7 July 2019, one of Excel's staff, Helen Smith, met with the respondent at the property, in order that she could carry out an inspection.
- xi At that meeting, the respondent acknowledged that he was in arrears of rent. He further stated that he intended to pay off the arrears over a period of 3-4 months, and that he had made an arrangement to that effect, with a Mrs Majid, one of the applicant's partners.
- xii However, no further payments were made to the rent, by the respondent.
- xiii He left the property on 5 September 2019.
- xiv By that time, the arrears of rent stood at £4,597.81.

15. The Tribunal further found, in and in law, that the respondent was the tenant of the property from on or about 15 June 2018 till 5 September 2019.

Decision

15. On the basis of these findings, Tribunal granted an order for payment to the applicant, against the respondent, in the sum of £4,597.81.

16. That decision was unanimous.

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.

Adrian Stalker

Legal Member

Date: 6 November 2020