

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 and Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

Chamber Ref: FTS/HPC/CV/19/0155

Re: Property at 97 Lewis Avenue, Wishaw, ML2 8XT (“the Property”)

Parties:

TCIB LLP Trading as Newkeylets, 119 Main Street, Wishaw, ML2 7AU (“the Applicant”)

Miss Sharon Radbourne, Mr Connor Binnie, 53 Meadowbank, Livingston, EH54 6EL; 97 Lewis Avenue, Wishaw, ML2 8XT (“the Respondents”)

Tribunal Members:

Richard Mill (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 in the sum of NINE HUNDRED AND FIFTEEN POUNDS AND THIRTEEN PENCE (£915.13) be granted against both Respondents.

Background

Reference is made to the Notes of the Case Management Discussion held on 5 March 2019.

Neither Respondent appeared nor were they represented. No defence in law has been put forth by either Respondent.

The Applicant lodged, as requested, the evidence regarding the rental increase operative from 1 February 2018.

Mr A Smith represented the Applicant.

Findings in Fact

- 1. The Second Respondent entered into a short assured tenancy with the Applicant in respect of the property at 97 Lewis Avenue Wishaw for an initial 6 month period commencing on 19 May 2015. The First Respondent acted as Guarantor in respect of all sums falling due under the lease. The Guarantee is dated 19 May 2015. She has not resigned from her position as Guarantor. The initial rent was £199 per calendar month. There is provision in the lease for rent increases annually. The rent has been increased once from February 2018 to £230 per calendar month. Advance notice was given of this more than 2 months in advance on 1 December 2017.**
- 2. The Second Respondent has fallen into significant rent arrears. He last made a personal payment of rent on 30 March 2017. Some small amounts of housing benefit / universal credit payments have been received by the Applicant since then. The First Respondent has failed to make any payments as Guarantor.**
- 3. The Second Respondent vacated the property on 15 February 2019.**
- 4. The rent arrears at the time of the Second Respondents departure from the property and at the date of hearing is well in excess of £1000.**

Reasons for Decision

Mr Smith for the Applicant advised that given the poor prospects of recovery he was prepared to seek a restricted payment sum to that sought at the time of the original application being lodged which was £915.13.

The Second Respondent is the tenant and contractually due to pay outstanding rent sums and is liable to pay such sums to the Applicant.

The First Respondent is equally liable to pay the Applicant the sums which represent the rent arrears. She is the Guarantor and is jointly and severally liable for the sums due under the lease.

Some representations have been made by the Respondents which are irrelevant.

The fact that the lease was entered into some time ago does not matter. The lease continued lawfully.

The Guarantee form signed by the First Respondent makes it clear she is acting as Guarantor for all sums due under the lease. The lease contains a clear provision regarding rent increases which would be expected. Only 1 rent increase was implemented over almost 4 years.

In a recent e mail (14 April) the Second Respondent admits vaguely that he is in rent arrears and offered to pay at £5 per month. No formal time to pay application was made as required but no clear liability was conceded by the

Respondents and additionally it would be unreasonable to expect the Applicant to receive the arrears by such small instalments.

Accordingly Decree against both Respondents in the sum sought by the Applicant is made.

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.

Mr Richard Mill

Legal Member

Date

18 April 2019

*Insert or Delete as required