



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/CV/18/2368

Re: Property at 27 Colquhoun Drive, Rosshead, G83 0QR (“the Property”)

Parties:

Mr Colin Newton, Mrs Fiona Newton, Dalriada, Craignure, Isle of Mull, PA65 6AY (“the Applicant”)

Mr David Lockhart, Ms Danielle McEwan, 27 Colquhoun Drive, Rosshead, G83 0QR (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member)

Decision (in absence of the Respondent(s))

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. By application dated 13 September 2018 and received by the Tribunal on 17 September 2018, the Applicant sought a payment order against the Respondents in respect of rent arrears. The Applicant sought the sum of £3843.55 against Danielle McEwan, Respondent and £1090 against David Lockhart, Respondent. The total rent arrears sought was £4933.55 which the Applicant had apportioned between the Respondents, as above stated.
2. On 28 September 2018, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of the application in terms of Rule 9 of the Regulations.
3. On 24 October 2018, a copy of the application and supporting documentation was served personally on Danielle McEwan, Respondent by Sheriff Officer at

the Property. She advised the Sheriff Officers that David Lockhart, Respondent no longer resided at the Property, having moved out some time ago and she was unaware of his forwarding address. This accorded with the Applicant's understanding of the position as per the application. A forwarding address has not been obtained for David Lockhart, Respondent and accordingly the application and supporting documentation has not been served on him.

4. No written representations have been lodged with the Tribunal by either Respondent. Further written documentation, namely an updated statement of the rent account, was lodged by the Applicant by email dated 5 November 2018, within the appropriate time limits. However, this had not been circulated to the Respondents.
5. The case called before the Legal Member of the Tribunal for a Case Management Discussion (CMD) on 12 November 2018 at 10am. Mr Colin Newton, Applicant attended on behalf of the Applicant. Neither Respondent was present.

Case Management Discussion

6. The Legal Member first dealt with the preliminary matters of the application not having been served on David Lockhart, Respondent prior to the CMD and also that Danielle McEwan, Respondent had only been notified of the amount specified in the original application as being sought against her, namely the sum of £3843.55. The Legal Member explained to Mr Newton that he could seek to amend the application to increase the sum sought, in terms of the updated statement of the rent account he had lodged or alter the apportionment of the rent arrears between the Respondents, in which case the CMD would require to be postponed to a later date to allow service of the amended application on the Respondent(s). Mr Newton advised that he would prefer to proceed with the CMD today and on that basis sought to amend the application to proceed against Danielle McEwan, Respondent alone and conceded that he would just proceed against her in the sum sought from her in terms of the original application, namely £3843.55. The Legal Member permitted these amendments to the application in terms of Rule 13 of the Regulations, being satisfied that Danielle McEwan, Respondent had been properly served and given fair notice of the payment claim against her. The CMD then proceeded on the basis of the amended application against Danielle McEwan, Respondent alone in the sum of £3843.55.
7. It was noted that Ms Danielle McEwan had not made any written representations in respect of the application but had advised the Sheriff Officers who served the paperwork on her personally that she was aware of the rent arrears, was unable to pay as she had lost her and would be seeking legal advice. Mr Newton advised that he had been given various reasons by the Respondents for non-payment. He confirmed that the Applicant was informed in February 2018 that David Lockhart had moved out of the Property and he had apportioned the rent arrears the Applicant had been seeking

against each Respondent appropriately. The Applicant advised that he had not received any separate payments from David Lockhart in respect of his share of the rent. He has not received any notification that Danielle McEwan has applied for or is in receipt of state benefits and she has not been in recent contact with him or made any payment proposals. Mr Newton confirmed that the last payment received from the Respondent was £300 on 18 July 2018. He advised that the rent arrears have accrued over the period January 2017 to date and now amount to £5933.55 in total. Payments have been made irregularly. Mr Newton advised that the Applicant has a separate application ongoing at the Tribunal for possession of the property.

Findings in fact

8. The Applicant is the landlord of the Property.
9. The Respondents are the tenants of the Property by virtue of a Short Assured Tenancy dated 31 August 2016 and occupied the Property from 15 September 2016. Danielle McEwan, Respondent still occupies the property, David Lockhart, Respondent having previously moved out.
10. The rent due in terms of the tenancy is £500 per calendar month, payable monthly in advance.
11. Liability for rent in terms of the tenancy is stated to be joint and several between the tenants.
12. Payments towards the rent have been irregular and no payments have been made since 18 July 2018. Rent arrears amount to £5933.55 as at 1 November 2018.
13. Arrears in rent amounting to £3843.55 are owed by Danielle McEwan, Respondent and have not been paid by her.

Reasons for Decision

14. The Tribunal was satisfied that the amount sought in terms of the amended application from Danielle McEwan, Respondent is due in respect of rent arrears accrued in respect of her tenancy of the Property and owing by her. No representations to the contrary have been made by the Respondent.

Decision

15. The Tribunal accordingly determined that an order for payment by the Danielle McEwan, Respondent of the sum of £3843.55 should be made in favour of the Applicant.

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.

Nicola Weir

Legal Member/Chair

12 November 2018
Date