

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/19/0576

**Re: Property at 5 Neidpath Road West, Giffnock, East Renfrewshire, G46 6SS
("the Property")**

Parties:

**Mr Paul Molinari t/a JHP Properties, C/O D J Alexander Lettings Ltd, 1 Wemyss
Place, Edinburgh, EH3 6DH ("the Applicant")**

**Mr Azeem Sadiq Ali, 5 Neidpath Road West, Giffnock, East Renfrewshire, G46
6SS ("the Respondent")**

Tribunal Members:

Joel Conn (Legal Member)

Decision (in absence of the Respondent)

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

Background

1. This is an application by the Applicant for civil proceedings in relation to an assured tenancy in terms of rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended ("the Procedure Rules"), namely an order for payment of rent arrears. The tenancy in question was a Short Assured Tenancy of the Property by the Applicant to the Respondent commencing on 10 December 2015.
2. The application was dated 21 February 2019 and lodged with the Tribunal shortly afterwards. The application was accompanied with a rent statement showing purported arrears to 10 February 2019 of £17,424, being missed rental payments from 10 July 2018 until 10 February 2019, each of £2,175 a month, with the addition of two late payment charges of £12. The

application however relied only on the missed payments from 23 November 2018, totalling £6,525, as the Applicant had already raised an application under Rule 70 for the arrears prior to that date. The application further sought contractual interest at 4% above Bank of England base rate and debt recovery costs of £300.

The Hearing

3. On 12 April 2019, at a case management discussion ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting at Glasgow Tribunals Centre, I was addressed by David Gibb, Head of Accounts and Property Support at DJ Alexander, the letting agent to the Applicant. As of 10:05, there was no appearance by the Respondent and my clerk confirmed that no contact had been received from or on behalf of the Respondent.
4. The Applicant's agent stated that there had been no contact from the Respondent since 25 January 2019. At that time, subsequent to the earlier application to the Tribunal under Rule 70, the Respondent had emailed to state that he had suffered a difficult year but believed matters to be turning around and that he wished to make payment of arrears outstanding by instalments. The Applicant's agent stated that a response was sent requesting a proposal but there was no response and, some weeks later, the Applicant's agents noted that the Respondent had been made bankrupt. (During the CMD I confirmed for myself that the Respondent did indeed appear to have been made bankrupt on 18 February 2019, with a date of sequestration of 20 November 2018.)
5. I was thus satisfied that there was no appearance by the Respondent nor any attempt by him to provide submissions or explain his non-appearance. In the circumstances, I was satisfied to consider the application in full at the CMD in the absence of the Respondent.
6. The Applicant's agent addressed me on the current level of rent arrears, confirming that no payments towards rent had been made for many months. On 27 March 2019 the Applicant's agent had intimated to the Tribunal an updated rent statement showing arrears of £21,774 and, in regard to the period sought in this application, arrears of £10,875 for payment dates from 10 December 2018 until 10 April 2019 (the last being an anticipated missed payment). There was nothing to suggest any application for benefits was being made or that any part of the substantial arrears arose due to difficulties with benefit payments. The Applicant's agent had sought in that email of 27 March 2019 for the application to be amended to seek £10,875 in arrears. I had instructed the Tribunal clerks at that time to intimate the amendment on the Respondent and no response had been received. I was satisfied to amend the application now to seek £10,875 of arrears, with interest.

7. During the CMD, the Applicant's agent confirmed that he no longer sought the £300 of debt recovery charges. In regard to interest, he sought interest at the contractual rate from each date payment was due.
8. I sought addressed on the correct designation of the Applicant, who had been referred to by two trading names in the application. The Applicant's agent confirmed that the landlord was Paul Molinari who traded as JHP Properties. An amendment of the application to that correct designation was made and granted.
9. The Applicant's agent confirmed no order in respect of expenses was to be made.

Findings in Fact

10. On 10 December 2015, the Applicant let the Property to the Respondent by lease (under a Short Assured Tenancy) with a start date of 10 December 2015 and an end date of 10 June 2016 ("the Tenancy").
11. Under the Tenancy, the Respondent was to make payment of £2,175 per month in rent to the Applicant on the 10th of each month.
12. Clause 8.2 of the Tenancy agreement permitted the Applicant to seek interest of "4% above the Bank of England base rate on unpaid rent... from the date the same falls due until full payment".
13. As of 21 February 2019, there was unpaid rent for the period from 23 November 2018 to 21 February 2019 of £6,525 due by the Respondent to the Applicant in terms of the Tenancy in respect of missed rental payments due on 10 December 2018, 10 January 2019 and 10 February 2019 of £2,175 each, with historic unpaid rent the subject of an earlier application to the Tribunal.
14. On or about 21 February 2019, the Applicant raised proceedings for an order for outstanding rent due in the sum of £6,525.
15. A Sheriff Officer acting on the instructions of the Tribunal served the application and intimation of the CMD upon the Respondent 26 March 2019.
16. On 12 April 2019, there was unpaid rent for the period from 23 November 2018 to that date of £10,875 due by the Respondent to the Applicant in terms of the Tenancy in respect of five missed rental payments due from 10 December 2018 to 10 April 2019 of £2,175 each.
17. The Respondent provided no evidence of payment of any part of the said unpaid rent due from 23 November 2018 to 12 April 2019 of £10,875.

Reasons for Decision

18. The application was in terms of rule 70, being an order for civil proceedings in relation to assured tenancies. I was satisfied, on the basis of the application and supporting papers, and the submissions provided by the Applicant at the CMD, that rent arrears of £10,875 were outstanding as at 12 April 2019 and remained outstanding. I was thus satisfied that the necessary level of evidence for such civil proceedings, as amended, on the sum of £10,875 had been provided.
19. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal and I was satisfied to make a decision at the CMD to award the sum of £10,875 against the Respondent along with contractual interest of 4% above Bank of England base per annum on each monthly payment of £2,175 comprising that sum from the date of originally falling due.
20. I noted that the application was limited to the rent arrears due up to 10 April 2019 and the Applicant reserved his position in regard to any further claim under the lease against the Respondent regarding any further rent or any other potential breach of the lease.

Decision

21. In all the circumstances, I was satisfied to make the decision to grant an order against the Respondent for payment of the sum of:
 - a. £2,175 to the Applicant with interest at 4% above the base rate of the Bank of England per annum from 10 December 2018 until payment;
 - b. £2,175 to the Applicant with interest at 4% above the base rate of the Bank of England per annum from 10 January 2019 until payment;
 - c. £2,175 to the Applicant with interest at 4% above the base rate of the Bank of England per annum from 10 February 2019 until payment;
 - d. £2,175 to the Applicant with interest at 4% above the base rate of the Bank of England per annum from 10 March 2019 until payment; and
 - e. £2,175 to the Applicant with interest at 4% above the base rate of the Bank of England per annum from 10 April 2019 until payment.

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.

Joel Conn

Legal Member/Chair

Date

12 April 2019