



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 2017 Rules.

Chamber Ref: FTS/HPC/CV/19/0869

Re: Property at 4 Patterton Drive, Barrhead, Glasgow, G78 2NN (“the Property”)

Parties:

Woodhill Property Investments Limited, C/O 9 MacNeill Drive, East Kilbride, Glasgow, G74 4TR (“the Applicant”)

**Ms Katrina McCartney, 4 Patterton Drive Barrhead
 (“the First Respondent”)**

and

**Ms Pamela McCartney, 45 South park Avenue, Barrhead, Glasgow, G78 1QF
 (“the Second Respondent”)**

Tribunal Members:

Martin McAllister (Legal Member) and Frances Wood (Ordinary Member).

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order of payment for £4,424.88 in favour of the Applicant be made against the First and Second Respondents on a joint and several basis.

Hearing

Mr John Cadger of Woodhill Property Investments Limited, the applicant, attended with Ms Jacqueline McLellan and Ms Daryl Harper from Castle Residential, the letting agents.

The Respondents were not present. We had regard to Rules 24(1) and 29 of the 2017 Rules and were satisfied that appropriate intimation of the hearing date had been made to the First and Second Respondents. We proceeded with the hearing.

Background

This is an application for payment in respect of arrears of rent in respect of the Property which is let under a short assured tenancy to the First Respondent. There is also another application (19/0868) which is in respect of recovery of the Property.

There have been case management discussions held on 9th July 2019 and on 23 August 2019. At the earlier one the Second Respondent was added as a party to the proceedings. The Second Respondent is a guarantor in respect of the obligations the First Respondent has in relation to the short assured tenancy. A Direction under Rule 16 of the 2017 Rules was issued at the latter case management discussion which related primarily to the other application. The note of the case management discussion of 23 August 2019 had been intimated to parties and contained the statement that the level of rent arrears at that date was £4,424.88.

Findings In Fact

1. The parties entered into a short assured tenancy agreement in respect of the Property which was dated 7th November 2017. The monthly rent was £525.
2. An AT6 Form was served on the Tenant on 19th September 2018 at which point there was arrears of rent of £2,498.
3. The level of rent arrears as at the date of the Hearing is in excess of £4,424.88.
4. The First and Second Respondents are jointly and severally liable in respect of any financial liabilities due to the Applicant which arise from the short assured tenancy.

Reasons for Decision

Ms McLelland, Ms Harper and the Applicant were consistent in stating that the rent arrears as at 19th September 2018 was £2,498. The rent statement which was produced evidenced this. They were also consistent in stating that the rent arrears as at 23rd August 2019 was £4,424.88. They indicated that the level of arrears had grown since that date. The Applicant said that he would restrict his claim to £4,424.88 which was the level of arrears due by the First Respondent on 23rd August 2019 and which had been intimated to parties. He produced vouching for this by providing a rent statement showing this sum to

be due at that date. Ms McLelland confirmed that the current level of arrears is in excess of this figure but she confirmed that, whilst the First Respondent would be aware of the amount currently due as a result of being advised of the position on a regular basis, the Second Respondent did not receive such communications.

We considered the position of the Second Respondent. We had before us a copy of a document headed "Guarantor Agreement." This is an agreement between the Applicant and the Second Respondent dated 30th October 2017 in which the Second Respondent guarantees the First Respondent's obligations in respect of the lease of the Property. It states that in providing the undertaking to the landlord the guarantor "irrevocably confirms that she will be jointly and severally liable with the Tenant for all costs payable to the Landlord in terms of the Lease or failing to pay rent....."

We had before us a short assured tenancy agreement between the Applicant and the First Respondent dated 7th November 2017 which stated that the rent payable to the Applicant by the First Respondent is £575 per month.

Discussion

We accepted the evidence of Ms McLelland and the Applicant in respect of the level of arrears. We found both to be credible and were satisfied that the rent statement before us stating the level of rent arrears to be £4, 424.88 was an accurate reflection of the sum outstanding at 23 August 2019. We accepted that the level of rent arrears was now higher but acknowledged the Applicant's position that he was prepared to restrict the sum sought by him to be the sum owing at that date because the sum outstanding then had been intimated to both parties.

We were satisfied that the short assured tenancy agreement before us was evidence of the obligation by the First Respondent to pay rent and that the Guarantor Agreement was evidence of the obligation of the Second Respondent to be jointly and severally liable with the First Respondent in respect of any obligations due by the First Respondent in respect of the short assured tenancy agreement.

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

Martin J. McAllister
Legal Member/Chair

7th October 2019