

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 (Act)

Chamber Ref: FTS/HPC/CV/19/1079

Re: Property at Flat 9/92, Montpelier Park, Edinburgh, EH10 4NG (“the Property”)

Parties:

Mrs Muriel MacDonald, Mrs Elaine Margaret Weir, 22 Dovecot Park, Aberdour, Fife, KY3 0TD; 13A Merchiston Gardens, Edinburgh, EH10 5DD (“the Applicant”)

Ms Zola Affley, 40/1 Warrender Park Terrace, Edinburgh, EH9 1EB (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent pay the sum of £4,800 with interest at the rate of 4.75% to the Applicant.

Background

This is an application under section 16 of the Act and Rule 70 of the Tribunal Procedure Rules for payment in respect of alleged rent arrears and costs of repairs/cleaning to the Property.

The case had called previously for a CMD at which the issues had been identified.

Hearing

The case called for a Hearing on 13 August 2019. The Applicant was present and represented by Mr MacDonald, Solicitor. The Respondent was present and represented herself.

At the outset the Parties requested time to discuss settlement. The Tribunal afforded this.

After an adjournment, the Parties then advised that it was agreed that the principal sum of £4,800 was due but that no agreement had been reached on instalments. After discussion, the Respondent submitted a Time to Pay Application that accepted liability for £4,800 but sought payment by instalments of £400 per month.

The application was opposed by the Applicant under reference, in particular, to an email exchange in August 2018 between the Parties. The Respondent stated she was in funds to the extent of £4,000 and was arranging to pay this. She also made reference to monies received in AUD from the sale of a Property owned by her in Australia. The Tribunal questioned her about this and ascertained that she had received the proceeds of the sale (\$243,000AUD) but her ex husband had contested the proceeds should not be payable to her. She put the monies in to a Family Trust in Australia in which she was the trustee and her two children were the beneficiaries.

The Tribunal drew the conclusion from that she had elected not to satisfy the debt at that stage and had chosen to send the money back to Australia and put in the Family Trust. When asked if she could access these funds her response was that she would rather not as that would cause issues with her ex husband and potential court action.

She also clarified that she was a beneficiary under a Family Trust along with her brother and mother, which had some \$10,000AUD in it.

In light of the above facts the Tribunal decided to refuse the Time to Pay application. The Respondent had access to funds more than sufficient to settle the current claim and had chosen not to.

The Tribunal granted the order for payment in the sum of £4,800 and applied interest at the contractual rate of 4.75%.

The Decision of the Tribunal 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.

Alan Strain

Legal Member/Chair

13 August 2019

Date