

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/18/1189

**Re: Property at 68 Castle Court, 44 Broomburn Drive, Glasgow, G77 5JH (“the
Property”)**

Parties:

**Mr Thomas Fitzsimmons and Mrs Kim Fitzsimmons, Lomond Bank House,
Balmaha House, Glasgow, G63 0JQ (“the Applicants”)**

**Mr Gary Jacobs, 68 Castle Court, 44 Broomburn Drive, Glasgow, G77 5JH (“the
Respondent”)**

Tribunal Members:

G McWilliams (Legal Member) and T Cain (Ordinary Member)

Decision:

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined as follows:**

Background

1. This is an Application for a payment order dated 15th May 2018 brought in terms of Rule 70 (Application for civil proceedings in relation to an assured tenancy under the 1988 Act) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the 2017 Regulations”).
2. The Applicants originally sought payment of arrears of rental payments of £6050.00, in relation to the Property, from the Respondent. At the Hearing today the Applicants, through their representative, sought payment of an amended arrears amount of £5050.00. The Applicants provided a copy of the parties’ Assured Tenancy agreement, and copies of their Bank Statements,

showing rental payments received from the Respondent, with their Application.

3. The Respondent had been validly served by Sheriff Officers with copies of the Application papers and Guidance Notes, and a letter notifying him of the Case Management Discussion ("CMD"), scheduled for 18th October 2018, from the Tribunal, on 2nd October 2018, An Certificate of Execution of Service was lodged with Application papers.

Case Management Discussion

4. A Case Management Discussion was held on 18th October 2018 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicants did not appear, but were represented by Ms L Weaver of Claphams Solicitors, Glasgow. The Respondent appeared personally. He was not represented. A Note in respect of the proceedings at the CMD and Directions to lodge further documentation, and regarding preparation for and proceedings at today's Evidential Hearing, were issued to the Applicants' representative and the Respondent on 23rd October 2018. The Applicants then provided further copies of Bank Statements and Rental Account Statements as well as a copy of a letter from East Renfrewshire Council to the Applicant Mr T Fitzsimmons, dated 12th June 2018, which stated that the Respondent does not qualify for Housing Benefit.

Hearing

5. A Hearing took place at Glasgow Tribunals Centre today 15th November 2018. The Applicant Mr Fitzsimmons, the Applicants' representative Ms L Weaver and the Respondent attended. Ms Weaver's colleague Ms R Islam also attended as an observer. The parties did not bring any witnesses. The Applicants' representative produced papers, for the Tribunal and the Respondent, which combined the additional documents lodged by her following the CMD on 18th October 2018.
6. The Applicants' representative stated to the Tribunal that the Respondent owed rent monies to the Applicants in the sum of £5550.00. She sought to amend the sum claimed by the Applicants to £5550.00. Mr Fitzsimmons confirmed that this was the case. The Respondent stated that he accepted that this amount of rental monies was owed to the Applicants.

Findings in Fact

7. The Respondent has been the tenant of the Property from 1st August 2016 to date.

8. In terms of the parties Tenancy Agreement, the Respondent is due to make monthly rental payments of £700.00 to the Applicants on the first day of each month.
9. At today's date the rental arrears owing by the Respondent to the Applicants is in the sum of £5550.00. The Respondent accepts that this sum is currently due.

Reasons for Decision

10. Section 16 of the Housing (Scotland) Act 2014 provides as follows:

“16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3) Part 1 of schedule 1 makes minor and consequential amendments.”

11. Accordingly, the Tribunal now has jurisdiction in relation to claims by landlords (such as the Applicants) for payment of unpaid rental against a tenant (such as the Respondent) under a short assured tenancy such as this.

12. The Tribunal considered the terms of the Assured Tenancy agreement and the copies of the Rental Accounts and Bank Statements which had been provided by the Applicants, as well as the oral evidence of the parties. Having considered all of the evidence the Tribunal found, on a balance of probabilities, that the Respondent owes the Applicants rental arrears in the amended sum now claimed, of £5550.00. In reaching its decision the Tribunal accepted the oral and written evidence of the Applicants and the oral evidence of the Respondent. The Respondent, in particular, candidly stated that the arrears amount claimed by the Applicants was due. The Tribunal offered the Respondent the opportunity of further considering the documentation which had been provided by the Applicants. The Respondent stated clearly that he accepted that the rental arrears amount claimed was owed. Accordingly, the Tribunal determined that there was an outstanding balance of rent arrears owing at the date of today's Hearing in the sum sought of £5550.00.

Decision

13. Accordingly, the Tribunal allow the Applicants' application to amend the sum claimed to £5550.00 and make an order for payment by the Respondent to the Applicants of the sum of £5550.00.

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.

G McWilliams

15th November 2018

Legal Member

Date