

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/18/1914

Re: Property at 5 Forties Crescent, Glasgow, G46 8JS (“the Property”)

Parties:

Dr Wan Hock Cheah, 19 Glenpark Avenue, Glasgow, G46 7JE (“the Applicant”)

Ms Hina Noor, 60 Kennishead Avenue, Flat No 9, Glasgow, G46 8RL (“the Respondent”)

Tribunal Members:

Sarah O'Neill (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment by the respondent of the sum of £1654 should be granted in favour of the applicant.

Background

An application was received from the applicant on 24 July 2018 seeking a payment order brought in terms of rule 70 (Application for civil proceedings in relation to an assured tenancy under the Housing (Scotland) Act 1988) of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”).

The applicant was seeking payment of rent arrears of £1654 from the respondent in relation to the property, being the amount of alleged arrears due from the respondent for the period from 26 March 2018 to 4 July 2018. The applicant had made a previous application (HPC/CV/18/0942) to the tribunal for payment of rent arrears by the respondent up until 25 March 2018. The tribunal had granted an order in his favour for payment of the sum of £1885.09 by the respondent in respect of rent arrears up until that date.

There had been a previous case management discussion in relation to the present application on 7 December 2018. The respondent had contacted the tribunal on the morning of 7 December 2018 to advise that she was unfit to attend due to health problems, and that her solicitor was unable to attend the case management discussion. That case management discussion had therefore been adjourned until 22 January 2019.

A copy of the note of the case management discussion proceedings and outcome, including the date of the continued case management discussion, had been sent to the respondent by recorded delivery on 13 December 2018. A further letter giving notice of the date of the continued case management discussion had been sent to her on 3 January 2019.

An email was received from the respondent on 21 January 2019, to say that she was unable to attend due to health problems, and had just come out of hospital. She stated: "If you want to go ahead and make a decision then please do and let me and my lawyer know the result. He can't get legal aid to represent me."

The Continued Case Management Discussion

A continued case management discussion was held on 22 January 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The applicant was present and gave evidence on his own behalf. The respondent was not present or represented.

The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a case management discussion had been duly complied with. It was clear from the email received from the respondent on 21 January 2019 that she was aware of the case management discussion.

The tribunal legal member asked the applicant whether he wished the case management discussion to go ahead, in light of the email received from the respondent on 21 January 2019. He stated his view that this was an ongoing issue, and that he believed the respondent would not appear on the next occasion, were the case management discussion to be adjourned again. He said that he wished to proceed with the case management discussion.

The tribunal noted the terms of the respondent's email, the fact that she had not submitted any written submissions and that she did not appear to be disputing that the rent arrears were due. Bearing in mind the overriding objective, in terms of rule 2 of the 2017 rules, to deal with the proceedings justly, including the need to avoid delay so far as compatible with the proper consideration of the issues, the tribunal decided to proceed with the case management discussion in the absence of the respondent.

The applicant asked the tribunal to grant an order for the sum of £1654 in respect of unpaid rent from 25 March 2018, which was the date the notice to quit sent to the respondent had expired, until 4 July 2018. He asked the tribunal to put in place a payment plan for the respondent to pay the arrears, saying that to date she had only

been paying £10 per month towards the money owed in terms of the tribunal's order in the previous application.

There was a handwritten note before the tribunal from Miss Lamont, who had previously acted as a supporter for the respondent. This note had been given to the tribunal at the case management discussion on 7 December 2018, and stated that the respondent had been in receipt of housing benefit for her current address from 22 June 2018. This appeared to tie in with the decision of the earlier tribunal, which said that the respondent had moved out of the property on 22 July 2018 (this appears to have been a mistake, and the tribunal considers that this should have said 22 June).

The applicant told the tribunal that while the respondent had moved out prior to this, he had not received the keys until 4 July 2018, when he collected them from the respondent's solicitor, having been requested to do so.

The applicant did not produce any clear evidence of the unpaid rent to the tribunal. He had included with his application a letter from Glasgow City Council dated 2 May 2018, confirming that the respondent's housing benefit entitlement had ended on 25 March 2018. He said that the respondent had been paid the housing benefit direct, and had previously paid the rent to him. He believed that she had paid the balance of the rent from her own money. He told the tribunal that no money had been received by him from the respondent for the rent due after 26 March 2018.

Findings in Fact

- The tribunal was satisfied that there was a short assured tenancy in place between the parties from 7 March 2017.
- The respondent left the property at some point between 22 June and 4 July 2018.
- The rent payable under the tenancy agreement was £460 every four weeks.
- As at 4 July 2018, the respondent owed the applicant the sum of £1654 in rental payments.

Reasons for Decision

The tribunal considered all of the evidence before it, including the decision in the previous application involving the parties. In the absence of any evidence from the respondent to the contrary, the tribunal was satisfied that an outstanding balance of rent arrears was due by the respondent to the applicant for the period from 26 March 2018 to 4 July 2018 in the sum of £1654.

The tribunal legal member explained to the applicant that the tribunal did not have power to require the respondent to pay the sum outstanding by instalments. It could only order the respondent to pay the sum due, and it was for the applicant to enforce any payment order granted.

Decision

The tribunal grants an order for payment by the respondent to the applicant for the sum of £1654.

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.

Sarah O'Neill

Legal Member/Chair

22/1/19

Date