

Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)

Chamber Ref: FTS/HPC/CV/18/2615

Re: Property at 3 Millerhill, Dalkeith, Midlothian Council, EH22 1RZ (“the Property”)

Parties:

Mrs Ellen Austin, 9 Glenpeffer Avenue, Aberlady, EH32 0UL and Mrs Mae Cameron, Mosswood, Lamancha, West Linton, EH46 7BD (“the Applicants”)

Mr Colin Miller - NO RESPONDENT ADDRESS, (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondent)

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

BACKGROUND

1. By lease dated 24 February 2011 the Applicants let the Property to the Respondent;
2. After allowing for permitted rent increases the rent payable at the time relevant to this application was £487.00 per calendar month;
3. At the time the lease was entered in to the Property was owned jointly by the Applicants. Thereafter, on 30 October 2014, the Second Respondent transferred her interest and title to the Property to the First Respondent. This transfer of title was not intimated to the Respondent nor was it registered with the Land Register of Scotland at that time;
4. The Respondent fell in to arrears of rent and the First Applicant presented an Application to the Tribunal seeking an order for payment of all rent arrears due;
5. A Case Management Discussion was held on 28 January 2019. At that it was determined that the amount of rent arrears accrued in the period from 1 December 2017 until 2 October 2018 was £4,383.00. The Tribunal raised a legal issue, however, relating to the transfer of title, whether the transfer, and an assignation of rents contained therein, had been intimated to the Respondent and, if not, whether any rent due was payable to the First Respondent alone or whether she was entitled to only one half of any rental payments due,

6. The Tribunal continued consideration of this particular matter to a Hearing which was assigned for 18 March 2019;

THE HEARING

7. A Hearing took place on 18 March 2019 within George House, 126 George Street, Edinburgh;
8. At that Hearing the First Applicant was represented by Mr Hamilton, Solicitor. The Second Applicant, at that time, was not a party to the Proceedings. The Respondent was not present;
9. Discussion took place in relation to the legal issue raised at the Case Management Discussion. After hearing from the First Applicant's solicitor, the Tribunal was of the view that it had still not been fully addressed in relation to the legal issue arising. Discussion also took place in relation to the possibility of the Second Applicant, who at that point was still not a party to the proceedings, being added as a party. If that was done it would enable an order for payment to be made in favour of both Applicants which, in turn, would remove the need for the Tribunal to consider legal issues relating to transfer of title, assignation of rents and intimation of the same to the Respondent;
10. The Tribunal adjourned the Hearing until 24 May 2019 at 10am, again within George House, 126 George Street, Edinburgh;
11. On 24 April 2019 the Tribunal received an application from the Second Applicant seeking to be added as a party to the proceedings. The First Applicant consented to this application. The Tribunal permitted the Second Applicant to be added as a party in terms of Rule 32 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017;
12. At the adjourned Hearing on 24 May 2019 both Applicants were represented by Mr Hamilton, Solicitor;
13. He sought an order for payment in favour of both Applicants in the sum of £4,383.00. It had been determined at the Case Management Discussion on 18 January 2019 that this was the amount of arrears due;
14. The Tribunal, considering that there had been no representations by nor on behalf of the Respondent at any stage, and considering the fact that both original landlords were now applicants in the proceedings, was of the view that it did not need to consider any legal arguments in relation to the previous transfer of title;

FINDINGS IN FACT

15. The Tribunal found the following facts to be established:-
 - a) By lease dated 24 February 2011 the Applicants let the Property to the Respondent;
 - b) After allowing for permitted rent increases the rent payable at the time relevant to this application was £487.00 per calendar month;

- c) Rent payments due on 1 December 2017 and 1 January until 1 October 2018 were not paid. This amounted to 9 payments of £487.00, being a total amount outstanding of £4,383.00;

DECISION

The Tribunal made an order for payment by the Respondent to the Applicants in the sum of FOUR THOUSAND THREE HUNDRED AND EIGHTY THREE POUNDS (£4,383.00) STERLING

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

Virgil Crawford

24 May 2019

Legal Member/Chair

Date