

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) for civil proceedings in relation to matters associated with a tenancy under the Housing (Scotland) Act 1988 and Rule 70 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017

Chamber Ref: CV/18/2825

**Re: Property at 19 Wester Suttieslea Gardens, Newtongrange, Midlothian, EH22 4FE
("the Property")**

Parties:

**Lowther Homes Limited, 25 Cochrane Street, Glasgow, G1 1HL
("the Applicant")**

**Wheatley Housing Group Litigation Team, Wheatley House, 25 Cochrane Street, Glasgow, G1 1HL
("the Applicant's Representative")**

**Ms Lisa Millar, 19 Wester Suttieslea Gardens, Newtongrange, Midlothian, EH22 4FE
("the Respondent")**

Tribunal Members:

Susanne L M Tanner Q.C. (Legal Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent should pay the Applicant the sum of THREE THOUSAND ONE HUNDRED AND EIGHT SIX POUNDS (£3186.00) STERLING; and made an Order for Payment in respect of the said sum.

STATEMENT OF REASONS

1. Findings-in-fact

- 1.1. There was a Short Assured Tenancy agreement between the parties in respect of the Property for the initial period from 15 December 2014 to 22 June 2015.
- 1.2. Since 22 June 2015 the tenancy has tacitly relocated on a calendar monthly basis.
- 1.3. The Short Assured Tenancy was entered into when Dunedin Canmore Enterprise Limited were managing on behalf of Dunedin Canmore Housing.
- 1.4. The assets of Dunedin Canmore Enterprise Limited were formally transferred to Dunedin Canmore Housing Limited in terms of a transfer of engagements on 20 March 2017.
- 1.5. Dunedin Canmore Housing Limited leased the Property to the Applicant in terms of a lease dated 30 March 2017, which lease is continuing by tacit relocation.
- 1.6. The Applicant acquired the lease when the Respondent was a sitting tenant.
- 1.7. The obligations of the original short tenancy agreement are due to by the Respondent to the Applicant.
- 1.8. The joint tenant Mr Greg McPherson left the Property on 2 April 2018.
- 1.9. The rent payable by the Respondent in terms of the tenancy agreement was £515 per calendar month payable on or before 1st day of each calendar month.
- 1.10. The rent increased to £550 by 1 December 2017 and continued at that rate until 1 December 2018.
- 1.11. As at 1 and 22 October 2018 the rent arrears amounted to £3186.00.
- 1.12. No payments in respect of the arrears have been made by the Respondent to the Applicant in the period from 1 October 2018 to 12 December 2018.

2. Procedural background

2.1. On 22 October 2018 the Applicant made an Application to the tribunal (“the Application”) under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”) for civil proceedings in relation to an assured tenancy under the Housing (Scotland) Act 1988 (“the 1988 Act”).

2.2. In the Application the Applicant sought payment from the Respondent of the sum of £3186.00, in respect of rent arrears under the short assured tenancy between the Applicant (and its predecessor) and the Respondent and Greg McPherson.

2.3. The Applicant lodged with the Application:

2.3.1. A paper apart headed “Section 5, “possession/eviction grounds inc payment”.

2.3.2. a copy of the short assured tenancy agreement between Dunedin Canmore Enterprise Limited (the landlord) and the Respondent and Mr Greg McPherson (the tenants) dated 15 December 2014;

2.3.3. a copy of the AT5 notice dated 9 December 2014 and proof of receipt by the Respondent and Greg McPherson dated 15 December 2014 at 10.32am;

2.3.4. a copy of the Notices to Quit dated 11 June 2018;

2.3.5. a copy of the Section 33 notices dated 11 June 2018;

2.3.6. A copy of the Certificate of Service of the Notice to Quit and Section 33 Notice on the Respondent and Mr McPherson dated 14th June 2018;

2.3.7. A copy of the Section 11 notice;

2.3.8. A lease between Dunedin Canmore Housing Limited and Lowther Homes Limited dated 31 March 2017;

2.3.9. A Schedule to the Property leased by Dunedin Canmore Housing Limited to Lowther Homes Limited in terms of the lease; and

2.3.10. A rent statement for the period 28 July 2017 to 1 October 2018.

2.4. The sum sought by the Applicant represents rent arrears as shown on the rental statement as being outstanding as at the date of making the Application on 1 October 2018, namely £3186.00.

2.5. On 29 October 2018 the Application was accepted for determination by a tribunal. A Case Management Discussion ("CMD") was fixed to enable the tribunal to explore how the parties' dispute may be efficiently resolved. Parties were notified by letter dated 19 November 2018 of the date, time and a place of the CMD. The Respondent was invited to submit any written representations by 6 December 2018. The notification and Application documentation were served on the Respondent by Sheriff Officers on 20 November 2018. Parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application which may involve making or refusing a payment order. Parties were advised that if they do not attend the CMD this will not stop a decision or order being made by the tribunal if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair.

2.6. The Respondent did not submit any written representations.

3. Case Management Discussion ("CMD") – 12 December 2018 at 14.00h at George House, 126 George Street, Edinburgh

3.1. A CMD took place at George House, 126 George Street, Edinburgh on 21 November 2018. It was held together with a CMD in the conjoined Application for an order for Possession Ref: EV/18/2822.

3.2. Ms Swanson from TC Young, Solicitors attended on behalf of the Applicant's Representative / the Applicant.

3.3. The Respondent did not attend or make any contact with the tribunal's administration.

3.4. The tribunal chair explored with the parties how the parties' dispute may be efficiently resolved and considered whether to do anything it may do at a hearing, including making a decision in terms of Rule 17 of the 2017 Rules.

3.5. The tribunal had already heard submissions from parties in relation to the related Application and had made a decision to make an order for possession in respect of the Property on the basis that the requirements of Section 33 of the Housing (Scotland) Act 1988 had been met.

- 3.6. In relation to the position with the joint tenancy, Ms Swanson submitted a copy of an email chain between Mr Greg McPherson and the Applicant from 5 and 6 March 2018 in which Mr McPherson gave notice to the Applicant on 28 February that he "would like to put one months' notice in for the property I rent from you as of today 28th February 2018". for the tenancy". The tribunal chair allowed the document to be lodged and a copy of the email chain was made by the tribunal clerk and placed on the file. Ms Swanson submitted that the Applicant is the mid-market branch of a housing association. The did not seem to have received it on 28th February or by 5 March 2018. He left the property on 2 April 2018. The tribunal chair asked if there had been a reply to Mr McPherson or correspondence to the Respondent in the present action in relation to the tenancy of the Property following receipt of the letter. Ms Swanson stated that there was no reply that she could provide and requested an adjournment to make contact with the solicitors principally instructed by the Applicant.
- 3.7. Following the adjournment, Ms Swanson submitted that the Applicant interpreted the position following Mr McPherson's email as the original tenancy continuing in the sole name of the Respondent. The Applicant views that the tenancy, in so far as it relates to Mr McPherson as a joint tenant, terminated on 2 April 2018. The person dealing with it at the Applicant's business has now left. Ms Swanson advised that the Applicant's standard procedure is to acknowledge notices in the form that they come in, in this case by email. However, as the person who dealt with it is no longer with the Applicant and has not saved the email, the Applicant's position is that the tenancy has not ended as a result of one tenant's notice. Ms Swanson submitted that Clause 1 and Clause 30 of the Short Assured Tenancy suggest that each of the tenants would have needed to give notice. The Applicant has treated the tenancy as ongoing with the Respondent only. The Applicant's standard procedure is to send out a letter or email to the other (remaining) tenant. However, there is no proof of what was sent in this case because the person who dealt with it has not saved it, if it was ever in existence, and is no longer there to confirm what was sent and when. Ms Swanson said that she did not ask if there was any correspondence between the Applicant and the Respondent between 2 April 2018 and now.
- 3.8. Reference was made to the rent statement in the name of the Respondent only which showed arrears of £3186.00 at 1 October 2018. Ms Swanson lodged an up to date rent statement for the Respondent to 1 December 2018 and stated that no payments had been made by the Respondent since the Application was lodged.
- 3.9. The tribunal Chair asked Ms Swanson if she could explain the entry on 3 April 2018 which has a minus in front of it (-£550) suggesting a debit, rather

than a credit by the Respondent, particularly it is the day after Mr McPherson is said to have vacated the Property. Ms Swanson said that it may be that the payment bounced. She requested an adjournment to confirm this matter with the Applicant's Representative.

3.10. Following the adjournment Ms Swanson advised that the entry on the rent statement on 3 April is an unpaid direct debit. Ms Swanson further stated that the payment application is only made against the Respondent on the basis that she is one of the joint parties and is jointly and severally liable for all of the obligations in terms of Clause 1 of the tenancy. Ms Swanson has not been advised by the Applicant or the Applicant's Representative the reason behind only seeking a payment order against the Respondent, other than that the bulk of the arrears have arisen since Mr McPherson left on 2 April 2018. Ms Swanson submitted that obviously she would have a right of relief against her former joint tenant for arrears for which they were jointly liable. Ms Swanson referred to the updated copy of up the rent statement and stated that it showed that nothing has been paid since May this year. Ms Swanson's instructions had been, if the Respondent was present, to seek to increase the figure to the current arrears balance. However, since the Respondent is not present Ms Swanson maintained the application for £3186.00.

3.11. The Respondent has not lodged a response form and not attended to challenge the arrears.

3.12. Ms Swanson also sought interest. On the Application form interest has been sought at the rate of 8% until payment. There is no ground specified in the Application or the paper apart for the awarding of interest at that rate. Ms Swanson submitted that the tenancy agreement says interest will accrue at the rate of 4.00% above the base rate of 0.75% so she was seeking interest at 4.75%. The tribunal Chair asked whether she had any submissions about whether it was in the tribunal's power to award interest. Ms Swanson accepted that there was no rule in the 2017 Rules relating to awards of interest. Ms Swanson stated that it was included as part of a claim based on the contract between the parties stating that the Landlord may charge interest at 4% over bank of Scotland Base Rate from time to time on all outstanding rent and/or other sums due under the Agreement. Ms Swanson accepted that there is no detail about the rate or basis of calculation of interest in the Application form or paper apart such as to give notice to the Respondent. There was further discussion with reference to Section 16 of the 2014 Act and the transfer of jurisdiction to the tribunal, following which Ms Swanson stated that she was not going to insist on the interest. Ms Swanson amended the Application to remove the claim for interest.

3.13. The tribunal was satisfied that rent arrears in the sum of £3186.00 were lawfully due by the Respondent to the Applicant and made an Order for Payment in respect of the said sum sought by the Applicant.

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.

Ms Susanne Tanner

12 December 2018

**Susanne L. M. Tanner Q.C.
Legal Member/Chair**