



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) in respect of an Application under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure (“the Rules”)

Chamber Ref: FTS/HPC/CV/18/1101

Re: Property at 30 Alexander Avenue, Glasgow, G71 6JP (“the Property”)

Parties:

Mr Gerald Carlin, 106 Main Street, Baillieston, G69 6AE (“the Applicant”)

Miss Louise Kerr, Mr Marc Horn, 30 Alexander Avenue, Glasgow, G71 6JP (“the Respondents”)

Tribunal Members:

Susan Christie (Legal Member) and Ann Moore (Ordinary Member)

Decision

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

Background

1. The application is for recovery of unpaid rental and was received by the Tribunal on 15 May 2018.
2. A Notice of Acceptance made under Rule 9 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure (“the Rules”) is dated 26 October 2018.
3. The Application is made under Rule 70 of the Rules.
4. On 31 October 2018 a Case Management Discussion took place and all Parties were in attendance. It was established that day that it was agreed by all Parties that:
 - a. The current lease between the Parties was executed on 22 August 2016 A valid Notice to Quit dated 21 February 2018 had been served on each Respondent by Sheriff Officer service on the same date
 - b. A valid section 33 Notice under the 1988 had been served on each Respondent, again served by Sheriff Officer on 21 February 2018
 - c. The contractual tenancy had ended as at 22 April 2018

5. The issue in dispute was identified as whether, or not a valid AT5 had been served on each tenant at the outset. Accordingly a Hearing was assigned to take place for evidence to be heard surrounding whether or not the lease in existence at the time of service of the Notices was a Short Assured Tenancy.
6. The Payment application was not discussed in detail at the CMD and a decision was deferred until the later Hearing to be assigned.
7. All Parties were written to on 5 November 2018 intimating that a Hearing had been assigned to take place on 5 December 2018 at 2pm in Glasgow Tribunals Centre, Room 111, 20 York Street, Glasgow G2 8GT. Intimation had been made on both Respondents by Sheriff Officer letterbox service on 7 November 2018.
8. All Parties attended at the Hearing assigned.
9. The Applicant brought his letting agent Ms Helen McGuire from N & L Properties, 68 Whirlow Road, Garrowhill Business Centre to assist in giving evidence regarding the creation of the tenancy and the paperwork provided. Neither Party had any objection to the original Lease agreement and AT5 being supplied that day and these were examined by the Respondents and the Tribunal and questions were asked in clarification.
10. It was established that the original lease agreement bore the signatures of both Respondents and the AT5 accorded with the statutory form.
11. The lease agreement contained within it a declaration at Page 3 which acknowledged that the tenants were served with an AT5 before the creation of the tenancy and that they understood the tenancy to be a Short Assured Tenancy within the meaning of section 32 of the Act.
12. It was accepted then that the lease between the Parties was a properly created Short Assured Tenancy
13. The Tribunal was then asked to grant recovery of possession in favour of the applicant, the requirements of section 33 of the Act having been complied with. No issue was taken to this by the Respondents who indicated they wished to move out. A separate Order is made under FTS/HPC/EV/18/1980.
14. An amended Rent Statement was produced and received without opposition. This disclosed that the rent due as at today's date is £5013.08 up to 22 December 2018.
15. The Respondents indicated that due to benefit issues payments had been suspended thus the sum due had increased. There might be backdated sums due to them. They agreed with the figure sought.
16. A Deposit of £445 had been taken which might be attributed to unpaid rent in due course.

Finding in fact

- I. The sum of £5013.08 being due and resting owing by the Respondents to the Applicant, an Order is made in that sum for payment.

Reasons for Decision & Decision

- 17. The Tribunal was satisfied based on the evidence produced and heard that ultimately the Parties were agreed that a SAT had been created. An Order for payment of the sum due by way of unpaid rent was made.

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.

Susan Christie

5 December 2018
Date