



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 Housing (Scotland) Act
2014**

Chamber Ref: FTS/HPC/CV/19/1201

Re: Property at 69 Sinclair Drive, Cowdenbeath, Fife, KY4 9RE (“the Property”)

Parties:

Mr James Park, Bandirran Lodge, Kinrossie, Perthshire, PH2 6JE; 9 Glenfield Court, Cowdenbeath, Fife, KY4 9ER (“the Applicant”)

Miss Gillian Schiavone, UNKNOWN, (“the Respondent”)

Tribunal Members:

Josephine Bonnar (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 of the sum of £16402.57 should be made in favour of the Applicant.

Background

1. The Applicant lodged an application with the Tribunal for payment order for arrears of rent owed by the Respondent, the former tenant of the property. A number of documents were lodged in support of the application including a copy tenancy agreement, a rent statement and copy bank statements. The Application identified Ms Janet Schiavone as the second applicant.
2. The Tribunal attempted service of a copy of the application on the Respondent at the address stated in the application. The occupier of the address advised the Sheriff Officers that the Respondent did not reside there and that she was unable to provide an alternative address.
3. The Applicant applied for service by advertisement in terms of Rule 6A of the First-tier tribunal for Scotland Housing and Property Chamber Procedure

regulations 2017 (" the 2017 Rules"). The Tribunal granted this request and a copy of the application together with a letters notifying the Respondent of the dates and times of the case management discussions were thereafter served by advertisement on the Chamber website.

4. The application first called for a case management discussion on 18 July 2019. The Applicant's wife and daughter attended on his behalf. Neither party attended and the Respondent was not represented. The Legal Member noted a number of issues with the application: -
 - a. The second named Applicant is the mother of the Respondent and it was at her address that service had previously been attempted. She had advised the Sheriff Officers that she was not a party to the application.
 - b. The lease is undated.
 - c. The application had identified McCash and Hunter solicitors the Applicant's representatives,
 - d. The title to the property is not in the name of the Applicants, and
 - e. Part of the sum claimed may have prescribed in terms of the Prescription and Limitation (Scotland) Act 1973.
5. The CMD was adjourned to allow these matters to be investigated and addressed. The case called for a further CMD on 26 August 2019. The Applicant attended accompanied by his daughter. The Respondent did not attend. The Legal Member noted the following: -
 - a. The second applicant's position regarding the application remained unclarified. She was not present and the Applicant could not provide information or documentation to establish that she was a party to the application or was content for the Applicant to proceed in his sole name,
 - b. The Applicant produced a copy land certificate showing that he and the second applicant had owned the property between May 2012 and December 2018, the period of the claim,
 - c. The Applicant accepted that part of the debt had prescribed and that the claim should be restricted,
 - d. The lease had been signed and although undated appeared to cover the period of the claim,
6. The case was adjourned to a further CMD. The case called before the Legal Member for a further CMD on 7 October 2019. The Applicant and his daughter, Nicola Park were present. The Respondent was not present and was not represented.

Case Management Discussion

7. The Legal Member firstly discussed the issue of the Second Applicant named on the application. Mr Park provided the Legal Member with a mandate signed by Janet Schiavone and dated 23 August 2019. It is attached to a letter from McCash and Hunter, solicitors, dated 8 September 2019. He advised that the solicitors received the signed mandate from Ms Schiavone's solicitors and passed it on. The mandate confirms that Ms Schiavone "assign(s) all rights to raise court proceedings against Miss Gillian Schiavone in respect of rent arrears to James Best Park". Furthermore, she authorises several individuals, including Nicola Park, to represent her. Mr Park confirmed that he wished to amend to application to delete the name of the second applicant. On behalf of the second applicant, Ms Park confirmed that this was not opposed. The Legal Member allowed the application to be amended so that Mr Park is the sole applicant.
8. The Legal Member proceeded to discuss other matters raised at previous CMDs. It was noted that the copy land certificate provided does establish ownership of the property between 2012 and 2018, the period of the claim. Mr Park advised the Legal Member that he and his sister, Janet Schiavone inherited the property in 2012. They decided to let it out to the Respondent. It was sold in December 2018. The Legal Member also noted that the lease provided, although undated, does state that the tenancy would start on 23 May 2012. It is signed by the Respondent and the rent charge is identified as £480.
9. Mr Park advised that, as shown on the rent statement lodged, the tenant occupied the property and initially paid the rent. There was a small shortfall of £360.09 in the tax year 2013/2014 and thereafter payments were sporadic. No payments were received after 2016. Notices were served in June 2018 and Respondent vacated in August 2018. The total sum owed as at the date she removed from the property was £17066.98 which is the sum claimed in the application. Mr Park confirmed that he accepted that some of the arrears have prescribed and that he is prepared to restrict his claim to those sums which have not prescribed. Following a short adjournment to consider the figures, and further discussions, Mr Park confirmed that he was prepared to restrict his claim to £16402.57, being the arrears of rent due but unpaid between 10 June 2014 and 10 June 2019, the date upon which the application was first served by advertisement on the Chamber website. Mr Park confirmed that this sum is still outstanding and that he seeks a payment order for same. He advised that he was also seeking the expenses of the application although accepts that this not stated in the application.

Findings in Fact

10. The Applicant and Janet Schiavone owned the property between May 2012 and December 2018.
11. The Respondent was the tenant of the property between 23 May 2012 and August 2018, when she vacated the subjects.
12. At the end of the tenancy the Respondent owed arrears of rent in the sum of £17066.98.
13. The sum of £17066.98 remains unpaid.

Reasons for Decision

14. The Legal Member considered the application, the documents lodged with the application and subsequently and the evidence presented at the CMD.
15. The Legal Member notes that the application and intimation of the CMDs have been served by advertisement on the Chamber website in accordance with Rule 6A of the 2017 Rules. There has been no response from the Respondent, and she has not attended any of the CMDs. The Applicant remains unaware of her current whereabouts.
16. The Legal Member is satisfied that the Applicant was one of the owners of the property between 2012 and 2018. The Respondent was the tenant of the property during this period, having signed a tenancy agreement and agreed to pay a monthly rent of £480.
17. The Legal Member is satisfied that the Respondent incurred arrears of rent in the sum of £17066.98 during the tenancy. The Applicant confirmed that he would restrict his claim to the sums due between 10 June 2014 and 10 June 2019, the date of service of the application, as the earlier sums have prescribed in terms of Prescription and Limitation (Scotland) Act 1973. The Legal Member is satisfied that the restricted sum of £16,404.57 is still outstanding and that the Applicant is entitled to an order in respect of same.
18. The Legal Member refuses the Applicants request made at the CMD for expenses on the grounds that there has been no prior notice to the Respondent of this claim and furthermore, in terms of Rule 40 of the 2017 Rules, there has been no unreasonable behaviour by the Respondent in the conduct of the case resulting in unnecessary or unreasonable expense.

Decision

19. The Tribunal grants an order for payment against the Respondent in the sum of £16404.57

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.

Josephine Bonnar

**Josephine Bonnar,
Legal Member/Chair**

10 October 2019