

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 (“2014 Act”)

Chamber Ref: FTS/HPC/CV/18/2028

Re: 18 Main Street, Wishaw, ML2 7AF (“the Property”)

Parties:

TCIB RESIDENTIAL LLP TRADING AS NEWKEYLETS, 119 Main Street, Wishaw, ML2 7AU (“the Applicant”)

Mr Alex Smith, 18 Main Street, Wishaw, ML2 7AF (“the Respondent”)

Tribunal Member:

Pamela Woodman (Legal Member)

Present:

The case management discussion in relation to case reference FTS/HPC/CV/18/2028 was scheduled to take place at 2.00pm on Monday 21 January 2019 in room 109, Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT (“the **Second CMD**”). Neither the Applicant nor the Respondent was present (or represented) at the Second CMD. The clerk to the Tribunal was Matthew Tainsh.

Decision (in absence of the Applicant and the Respondent)

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

BACKGROUND

1. The Applicant made an application to the Tribunal under section 16 of the 2014 Act for civil proceedings in relation to matters associated with a tenancy under the Housing (Scotland) Act 1988 (“**1988 Act**”). The application was made in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended, (“**2017 Regulations**”). More specifically, the application was made in terms of rule 70 (*Application for civil proceedings in relation to an assured tenancy under the 1988 Act*) of the HPC Rules.

2. A case management discussion had been held on 29 November 2018 (“**the First CMD**”), in respect of which “Notes on a Case Management Discussion (including Direction)” were issued by the Legal Member (“**the First CMD Notes**”). By letters dated 30 November 2018, the Applicant and the Respondent were each sent a copy of the First CMD Notes.
3. The First CMD Notes narrated at:
 - a. paragraph 15 – “The Legal Member noted that, based on the Rent Statement, the rent arrears had (during the period covered by the Rent Statement) fluctuated regularly. The agreed monthly rent payable was £400. The maximum amount of rent arrears shown in the Rent Statement was £500.19 as at 2 August 2018. As an example of the level of fluctuation involved, the Legal Member noted that the Rent Statement showed rent arrears, as at 28 June 2018, of £17.99 and, as at 2 August 2018 (a rent payment date), of £500.19. Based on the information provided in the Rent Statement, payments were being made by the Respondent at irregular intervals.”
 - b. paragraph 16 – “During the CMD, the Applicant’s Representative was unable to confirm the current amount of rent arrears owed by the Respondent as at the date of the CMD. The Applicant’s Representative offered to check this and to provide the updated information to the Tribunal but noted that the arrears were increasing rather than decreasing. He did indicate that at least one payment had been made by the Respondent’s daughter on behalf of the Respondent since 2 August 2018 (being the last date referred to in the Rent Statement).”
 - c. paragraph 18 – “The Legal Member did not consider that it was appropriate to reject the application for an order for payment (given that a basic case had been made out) but nor was it appropriate to grant an order for payment based on the amount in the Rent Statement (namely £500.19), particularly because the amount of rent arrears as at the date of the CMD was unknown. However, she noted that, for so long as the rent arrears were fluctuating regularly, it would be not be straightforward for the Tribunal to grant an order for payment, particularly as the rent arrears (immediately before a rent payment date) were regularly less than 25% of one month’s rent and so the amount due as at the date of another case management discussion would likely depend upon the date and where it fell within the monthly rent cycle (i.e. how long after the last due date for payment of rent).”
4. Nonetheless, the Applicant did not wish to withdraw its application in this case.
5. In light of this, the representative of the Applicant had been advised during the First CMD that directions would be issued with which the Applicant would require to comply. The relevant directions (“**the Directions**”) were included in the First CMD Notes in the following terms:

“In terms of Rule 16, the Tribunal (on its own initiative) directs the Applicant, on or before (but no later than) Friday 28 December 2018, to:

- a. prepare an updated rent statement which updates the Rent Statement to include all rent payments due from the Respondent and all payments made by the Respondent in respect of rent from the commencement of the tenancy up to (and including) Monday 17 December 2018 (“**the Updated Rent Statement**”);
 - b. serve the Respondent with a copy of the Updated Rent Statement;
 - c. submit to the Tribunal a copy of the Updated Rent Statement – this may be submitted to the Tribunal by e-mail or post (to arrive on or before 28 December 2018); and
 - d. submit to the Tribunal evidence of service of the Updated Rent Statement on the Respondent – this may be submitted to the Tribunal by e-mail or post (to arrive on or before 28 December 2018).”
6. By letters dated 5 December 2018, the Applicant and the Respondent were notified of the date, time and place of the Second CMD by the Tribunal.
 7. Neither the Applicant nor the Respondent had advised the Tribunal prior to the Second CMD that it or he would not be attending (or not be being represented at) the Second CMD.
 8. The Respondent had not provided any written representations prior to the Second CMD (and also had not provided any written representations prior to the First CMD).

REASONS FOR DECISION

9. The Applicant had not provided any response to the Directions by the deadline stated in them nor at any other time prior to the Second CMD. Accordingly, the Applicant had failed to comply with the Directions. This was the primary reason for the refusal.
10. As a supplementary reason, the Applicant had failed to attend or be represented at the Second CMD.

DECISION

11. Accordingly, the application with reference FTS/HPC/CV/18/2028 for an order for payment against the Respondent was refused.

Right of Appeal

In terms of Section 46 of the Tribunals (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.

Pamela Woodman

Legal Member

21.1.19

Date