



**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**

**Chamber Ref: FTS/HPC/CV/19/3466**

**Re: Property at Flat 3/1, 17 Prospect Hill Grove, Glasgow, G42 9LG (“the Property”)**

**Parties:**

**Places for People Homes Limited, c/o Touchstone, 2 Crescent Office Park, Clarks Way, Bath, BA2 2AF (“the Applicant”)**

**Mr Paul Kelly, Flat 3/1, 17 Prospect Hill Grove, Glasgow, G42 9LG (“the Respondent”)**

**Tribunal Members:**

**Sarah O'Neill (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 by the respondent of the sum of £4582 should be granted in favour of the applicant.**

**Background**

1. An application was received on 29 October 2019 for a payment order brought in terms of rule 70 (Application for civil proceedings in relation to an assured tenancy under the Housing (Scotland) Act 1988) of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”).
2. The applicant was seeking payment of rent arrears of £2512 from the respondent in relation to the property, being the amount of arrears outstanding as at the date of the application.

3. The application included copies of the tenancy agreement and a rent statement showing the rent outstanding as at the date of the application to be £2512.
4. A previous case management discussion (CMD) had been held on 10 January 2020. At that CMD, the tribunal had noted that the sheriff officer's certificate of service relating to the notice of that CMD, together with the application papers and guidance notes, referred to the address whether the papers were deposited as *'Flat 3/1, 17 Prospecthill Grove Glasgow G42 9LG*. This differed from the address in the application and the tenancy agreement, and all of the other paperwork, which was *Flat 3/1 17 Prospecthill Way, Glasgow G42 9LG*.
5. At that CMD, Ms Nicola Caldwell appearing on behalf of the applicant advised the tribunal that the correct property address was in fact Flat 3/1, 17 Prospecthill Way, Glasgow but that the postcode was G42 9LJ and not G42 9LG. At her request, the tribunal allowed an amendment to the application to state that address. The tribunal adjourned consideration of the application to enable the papers to be served again on the respondent. The tribunal issued a direction on 15 January 2020, noting that the sheriff officer had provided further information in a report dated 4 December 2019, and directed the applicant to make inquiries and contact the tribunal by 23 January 2020 to clarify the property address and the address of the respondent and if necessary to further amend the application to reflect this.
6. An email was received from the applicant's solicitor, Mr Kenneth Caldwell of Patten and Prentice solicitors on 23 January 2020. He explained that after further enquiries, it had been established that the applicant owns 14 flats within a new build development comprising of two properties known as 17 Prospecthill Grove and 5 Prospecthill Way, Glasgow. He provided copies of a sales brochure produced by the applicant in support of this. He advised that the tenancy agreement erroneously described the property as 17 Prospecthill Way but correctly specified the postcode as G42 9LG. He stated that he had been advised that the building at number 17 had a street sign marked 'Prospecthill Way'. He stated that the applicant now sought to amend the application to correctly design the property occupied by the respondent as 3/1, 17 Prospecthill Grove, Glasgow G42 9LG.
7. The tribunal chairperson agreed to amend the application to state the property address as 3/1, 17 Prospecthill Grove, Glasgow G42 9LG.
8. It then became apparent that the notice of the new CMD arranged for 19 February 2020 had been sent to the respondent by recorded delivery and first class post at the address which the application had previously been amended to include, i.e. Flat 3/1, 17 Prospecthill Way, Glasgow G42 9LJ. The tribunal administration therefore sent a new CMD notification letter to the respondent by recorded delivery and first class post at the newly amended address of 3/1, 17 Prospecthill Grove, Glasgow G42 9LG.

9. In his email of 23 January 2020, which was copied to the respondent, Mr Caldwell asked the tribunal to amend the application to reflect the current rental balance of £4582. An updated rental statement was attached to his email.
10. No written representations or time to pay application were received from the respondent prior to the CMD.

### **The Case Management Discussion**

11. A case management discussion (CMD) was held on 19 February 2020 at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The applicant was represented by Ms Nicola Caldwell of TC Young Solicitors, on behalf of Patten and Prentice solicitors. The respondent was not present or represented at the CMD. The tribunal delayed the start of the CMD by 10 minutes, in case the respondent had been detained. He did not appear, however, and no telephone calls, messages or emails had been received from him.
12. The tribunal considered whether the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a CMD had been duly complied with. The tribunal administration confirmed that the recorded delivery letter containing the CMD notification had not been signed for by the respondent. There was no evidence, however, that the letter sent by first class post had not been received by the respondent.
13. The tribunal was satisfied that the application papers had in fact been validly served by the sheriff officer on 4 December 2019, prior to the first CMD. The sheriff officer had provided a report on that date, stating that on attending at Prospecthill Way, it had been discovered that the only block of flats at that address was number 5. On making further enquiries, it had become apparent that the postcode given related to 17 Prospecthill Grove, where a neighbour had confirmed that this was the correct address for the respondent.
14. When papers have previously been successfully served by sheriff officer, it is the tribunal's practice to send further letters by recorded delivery and first class post, and to give parties a minimum of 14 days' notice of a CMD.
15. In light of the above information, the tribunal was satisfied that the requirements of rule 17(2) of the 2017 rules had been complied with. The tribunal therefore proceeded with the CMD in the absence of the respondent.

### **Evidence on behalf of the applicant**

16. Ms Caldwell pointed to the updated rent statement received from the applicant's solicitor on 23 January 2020, which showed an outstanding balance of £4582. She asked the tribunal to amend the sum sought to £4582. She told the tribunal that no payments had been received from the respondent, and that the outstanding balance due was now £5132.

17. She asked the tribunal to grant an order for payment by the respondent to the applicant of £4582. She stated that the deposit of £750 which was provided for in the tenancy agreement was currently held in an approved tenancy deposit scheme, and would if appropriate be deducted from the rent arrears due by the respondent after he had left the property, depending on what other deductions might be appropriate at that time.

### **Findings in Fact**

18. The tribunal made the following findings in fact:

- There was a short assured tenancy in place between the applicant and the respondent. The tenancy commenced on 4 June 2015, running for an initial period of twelve months, and continuing on a monthly basis thereafter.
- The monthly rent payable in terms of the tenancy agreement was £650 per calendar month payable in advance at the start of the tenancy, later rising to £655, and then £690 from 1 October 2019.
- As at 31 January 2020, the respondent owed the applicant the sum of £4582 in rental payments.
- The respondent had been validly served with a form AT6 by sheriff officer on 10 October 2019, stating that he owed rental arrears of £2512. A rent statement showing that outstanding balance was attached to the form AT6.
- The email received from the applicant's solicitor on 23 January 2020, requesting to amend the sum sought to £4582, and attaching an updated rent statement, had been copied to the respondent,

### **Reasons for Decision**

19. The tribunal agreed to amend the sum sought by the applicant to £4582, as the amendment had been notified to both the tribunal and the respondent at least 14 days prior to the CMD, in terms of rule 14A of the 2017 rules.

20. Having considered the evidence before it, the tribunal was satisfied that the respondent had been given adequate notice of the sums sought by the applicant. Having considered the updated rent statement provided by the applicant's solicitor on 23 January, the tribunal was satisfied that the respondent owed the applicant the sum of £4582 in rent arrears. The tribunal therefore decided to make an order for payment by the respondent to the applicant of that sum.

## Decision

The tribunal grants an order for payment by the respondent to the applicant for the sum of £4582.

## 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.

  
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Legal Member/Chair

19/7/20  
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Date