



**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/18/2132

Re: Property at 7/1 Tait Wynd, Edinburgh, EH15 2RJ (“the Property”)

Parties:

Lowther Homes Limited, 25 Cochrane Street, Glasgow, G1 1HL (“the Applicant”)

Ms Carmen Chalmers, 7/1 Tait Wynd, Edinburgh, EH15 2RJ (“the Respondent”)

Tribunal Members:

Lynsey MacDonald (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for payment should be granted.

1. Background

- 1.1. The Applicant sought an order for payment in respect of rent arrears. An application in terms of Rule 70 (Civil Proceedings) was received by the Tribunal on 15th August 2018.
- 1.2. In a separate application the Applicant sought an order for possession of the Property. The application in terms of Rule 66 (Possession on Termination of Short Assured Tenancy) was received by the Tribunal on 15th August 2018.
- 1.3. The Applicant lodged: the lease dated 30th July 2010; form AT5 dated 30th July 2010; copies of the Notice to Quit and section 33 notice, both dated 6th December 2017, together with executions of service thereof; a section 11 notice dated 10th August 2018, together with confirmation of submission by email thereof; a rent statement.

1.4. The Tribunal conjoined the applications, and fixed a Case Management Discussion in respect of each case, to call on the same date. The Respondent was advised that written representations in response to the application required to be lodged by 8th November 2018. No written representations were received. The Respondent was advised that she was required to attend the Case Management Discussion today, and was informed that the Tribunal could today make any decision on the application that could be made at the full Hearing, if the Tribunal had sufficient information and considered the procedure to have been fair.

2. The Case Management Discussion

2.1. The Applicant was represented by Mr Neil Mathieson, Solicitor.

2.2. The Respondent attended and was unrepresented, however had with her a supporter.

2.3. The Applicant's solicitor confirmed that he sought an order for possession and an order for payment, and wished both to be granted today. The Applicant's solicitor advised that the section 33 notice and the notice to quit were both dated 6th November 2017 and both had been served by Sheriff Officer on 8th November 2017. He advised that the notice to quit required possession of the property by 5th January 2018 and that the section 33 notice required possession of the property by 10th January 2018. He invited to the Tribunal to grant the order for possession. The Applicant's solicitor tendered an up to date rent statement, which had previously been given to the Respondent.

2.4. The Respondent advised that she was a single parent and had been suffering from difficulties with her visa and immigration status. She advised that she had been employed in a temporary position, but had recently been offered permanent employment, which was due to commence on 3rd December 2018. She advised that there had been difficulties with payment of her benefits, and in particular her Housing Benefit had been stopped in April 2018. She advised that the issues had recently been resolved, and she would once again be receiving Housing benefit, albeit at a considerably lower rate. She stated that she was not expecting to receive any payment in respect of arrears of benefits. The Respondent stated that she wished to remain in the property, and was prepared to make payments in respect of rent arrears. In particular she confirmed that she could afford to pay rent of £650 per month, together with a further £150 until the rent arrears were paid.

2.5. In light of the Respondent's offer to pay the rent arrears, the Tribunal invited the Applicant's solicitor to reconsider the need for the applications for possession and payment. The Applicant's solicitor was

given time to consult with the Applicant. The Applicant wished to proceed with both applications.

- 2.6. Following discussion with the Applicant and Respondent, the Tribunal considered that there were no areas of dispute between the parties apart from their desired outcomes. In particular the Respondent confirmed that she had received the notices referred to above, and that the sums shown in the up to date rent statement were factually correct. In particular she pointed to a payment by her of £868.24, which had been made by way of lump sum after receipt of arrears of benefits.
- 2.7. The Applicant's solicitor renewed his motions to grant the order for possession and payment. The Applicant's solicitor moved to amend the sum sued for to £3,745.68, as reflected in the revised rent statement. He sought interest at the rate of 4% above the Bank of Scotland base rate, in accordance with the terms of the lease.

3. Findings in Fact

- 3.1. The Applicant and the Respondent entered into a short assured tenancy agreement on 30th July 2010. At that time Mr Bruce Chalmers was a joint tenant, however his tenancy has since ended.
- 3.2. The lease expired on 5th February 2011, and provided for monthly renewal.
- 3.3. The rent payable was originally £563.55 per calendar month. The rent was increased throughout the period of the lease. By 1st May 2018 the rent increased to £650.00 per calendar month.
- 3.4. The Respondent failed to pay the full sum of rent due under the lease.
- 3.5. Between January 2018 and August 2018 the Applicant and the Respondent reached agreement that the Respondent would pay additional sums each month to pay the rent arrears. The Respondent did not consistently adhere to the agreement.
- 3.6. On 2nd November 2018, the sum of £3,745.68 in rent arrears was outstanding.

4. Reasons for Decision

- 4.1. The parties were in agreement regarding the factual background. There was nothing before the Tribunal challenging or disputing any of the evidence before it.

- 4.2. There being no factual dispute, and no intention to lead additional evidence, there would be no purpose in fixing a full Hearing.
- 4.3. The Tribunal proceeded on the basis of the written documents which had previously been lodged, together with the oral submissions from the Applicant's solicitor and the Respondent.

5. Decision

- 5.1. The Tribunal accepted that the sum sued for was due under the terms of the lease.
- 5.2. The order for payment in the amended sum of £3,745.68 is granted, together with interest thereon at the rate of 4% over Bank of Scotland base rate from the due date for payment until paid

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.

Lynsey MacDonald

Legal Member/Chair

13/11/18

Date