

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 and Section 7 of the Debtors (Scotland) Act 1987

Chamber Ref: FTS/HPC/CV/21/2774

Re: Property at 72 Glen Rosa Gardens, Craigmarloch, Cumbernauld, G68 0ES (“the Property”)

Parties:

Mr James Johnson, Villa 65, Street 9, Springs 2, Dubai, UAE (“the Applicant”)

Ms Linsey Adair, 34 St Andrew Park, Troon, KA10 7GQ (“the Respondent”)

Tribunal Member:

Karen Kirk (Legal Member)

Introduction

This was an Application for Civil Proceedings in relation to a Private Residential Tenancy under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016. The CMD took place by teleconference due to the covid-19 pandemic. Prior to the Hearing the Respondent had lodged a time to Pay Application under the Debtors (Scotland) Act 1987. The Respondent admitted liability and sought to pay the amount due to the Applicant at £50 per month. This had been responded to by the Applicant and not accepted.

1. Attendance and Representation

Paul Fairbridge, Solicitor, attended for the Applicant.

The Respondent was personally present.

2. Procedural Matters

The Procedure at the Hearing was discussed with both parties. The Tribunal indicated given the Time to Pay application and response the proposed procedure would be to allow the Respondent to address the Tribunal on the

Time to Pay application first and then allow the Applicant's solicitor to respond. There was no objection to this by either party.

3. Summary of Discussion at the Hearing

For the Respondent

The Respondent set out that she was a single parent with 3 children residing with her, one of which was a dependent at 5 years old. She explained that prior to the pandemic she had financial security and entered into the tenancy fully able to adhere to the contractual payment of £1250. Her view was that she began to consider that she was paying too much rent for similar properties in the area and she and the Applicant agreed a mutual reduction of the contractual monthly payment going forward. She said she would have considered finding alternative accommodation otherwise.

The Respondent then said that the pandemic hit. She was furloughed and then made redundant. From May 2020 she paid a reduced rent of £450 until October 2020. She then paid £600 from November 2020. She said that the Applicant said an agreement had been made but then said they would need to agree on a payment plan.

The Respondent said her salary significantly decreased without warning and she lost considerable income upon which she relied for her financial arrangements. She said she was a sole parent and her only disposable income for her and her children per month is £150 and she can only afford £50 per month. She explained every month she is in overdraft and she is waiting on her next salary payment to meet essentials.

The Respondent said that most of the communication was by the exchange on *whats app* in regards the agreed rent reduction and her circumstances.

For the Applicant

The Applicants representative set out that the position was as it would take 127 months to clear the debt it was on that basis that the Applicants view was that the offer of £50 was unreasonable. The submission was that it was unreasonable to expect the debt to be paid over that period of time. The submission further was that the Tribunal would be stretching itself to allow a debt paid in a greater period than within 12 months to 24 months and that anything over that would be exceptional. The proposal from his client was that he would accept £1500 with a balance then paid over 2 years. The Applicant's representative said he had no case law to hand but he could send it to the Tribunal. He referred to a general rule before the jurisdiction now of the Tribunal that Time to Pay could not be allowed for longer than 2 years and the longest he had been involved in was 3 years. The Applicant's representative said he thought the Applicant had one property and was not aware of his occupation but he lives in Dubai and instructs a letting agency to manage the property

The Applicant's representative said that there was already a reduction of rent to £1100 from £1250 which was the contractual monthly rent £1250. He thereafter agreed with the Tribunal that this had been mutually agreed between parties that the contractual rent was then £1100.

4. Directions Issued

The Tribunal determined after hearing parties that an opportunity ought to be given to allow both to provide further information and submissions to the Tribunal to allow the Time to Pay Application to be determined. The Tribunal issued the following directions;

The Applicant and the Respondent are required to provide:

1. *All copies of Whats App conversations on the matter of rent for the property during 2020 which are considered relevant.*

The Applicant is required to provide:

2. *Written legal submissions supporting his response to the Time to Pay Application enclosing detail of his circumstances as a landlord.*

The Respondent is required to provide:

3. *Redacted evidence showing that she was furloughed and thereafter made redundant from her job due to the pandemic.*

5. Reason for Directions

Parties were agreed on liability and following the Time to Pay Application which was opposed by the Applicant the determination of the Time to Pay Application rested on the discretion of the Tribunal. Both parties were agreed no further oral evidence was required by the Tribunal. However the Tribunal in order to exercise its discretion fairly to both parties requested written submissions from the Applicant's representative including details on the Applicant's circumstances alongside written confirmation of the Respondent's furlough, redundancy and what copies of *whats app* messages that could be lodged to assist the Tribunal.

It must be emphasised that both Parties were agreed no further Hearing was required and that following consideration of the information lodged the Tribunal would thereafter make a determination.

6. Submissions/Further information lodged.

For the Applicant

The Applicant's submission is that the time to pay application submitted by the Respondent ought be refused as unreasonable. The Applicant set out in written submissions that the Property has been relet at a monthly rental of £1,350, he is employed but he has significant outgoings and relies upon the rent for this property in part to meet these. The applicant has another rental property and resides in Dubai with his wife and 2 dependent children. He rents that property but has maintenance payments which he meets to 2 other children. The submission was that the Applicant's finances were complex.

The Applicant further submits correctly that the provisions covering Time to Pay applications is contained in the Debtors (Scotland) Act 1987 and that this decision is a discretionary one. Further the provisions however do not set out a test or provision as to how that discretion is to be exercised. The submission made further is that in regards to paragraph 7.03 of McPhail that "*the court is unlikely to grant an application if the result would be that the repayment of the debt would take an inordinate length of time*". The submission for the Applicant is that repayment at £50 per month would take an inordinate length of time and as such the application should be refused. The submission was that the level of a court levied fine should be decided upon a 12-18 month period as being reasonable but no authority for this general approach given.

For the Respondent

The Respondent provided evidence supporting her furlough and redundancy following the Covid-19 pandemic on 2020. This was accepted by the Applicant and no facts were in dispute. The Respondent provided further communication information where she set out that she had been clear with the Applicant throughout about the fact she had to look at alternative cheaper accommodation when her financial circumstances changed.

The Respondent set out that she considered her financial situation has been scrutinised in comparison to the Applicant's position which was set out as complex. Her submission was that the case law and provisions referred to by the Applicant on the Time to Pay application do not in her view take into account the situation following the pandemic. The submission was further that she had taken advice regarding her commitments and that she has made a decision on affordability rather than the term in which she can pay back the money owed back. She is also stated that she wished to submit that she is currently under the care of a neurologist, pending an MRI for 2 separate, serious procedures in her face and brain.

7. Findings in Fact

- 1. The Applicant sought a Payment Order for the sum of £6383. A rent statement for the property had been lodged. The Respondent under same was in arrears of £6383.98. The Respondent did not dispute these arrears.**
- 2. The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property as a copy title was lodged with the Application.**
- 3. There was a PRT in place between parties dated 5th October 2018.**

4. The Respondent agreed in terms of same to make payment per calendar month of £1250 to the Applicant. Following the pandemic commencing in March 2020 parties agreed a reduction in rent to £1100.
5. The Respondent was furloughed and made redundant as a direct result of the pandemic. The Applicant did not dispute same.
6. The Tribunal was satisfied that rent arrears for the property due by the Respondent at the date of the application amounted to £6383.98.
7. The Respondent lodged an Application for Time to Pay the Debtors (Scotland) Act 1987. She sought to make payment towards the sum due at £50 per month. This was not accepted by the Applicant who considers that the Application be refused.
8. The Tribunal determined that given the terms of the application for time to pay the Respondent would not meet the debt due for a period of 10 years.
9. The Tribunal gave careful consideration to the Application, sought written submissions and further information from parties to do so.
10. The Respondent was clear on the fact as a single parent that she could not afford anything more than £50 and had a number of liabilities. Her change of financial circumstances was sadly due to the pandemic.
11. The Applicant has another rental property, his own dependents and works and lives in Dubai.
12. The Tribunal refuses the Application for Time to Pay lodged by the Respondent on the grounds that the terms of same if granted would cause a considerable delay in the repayment of the debt due to the Applicant.
13. Accordingly, in terms of Section 51 of the 2016 Act the Tribunal granted a payment order against the Respondent for the sum of £6383.98.

8. Reasons for Decision

The Tribunal carefully considered the Respondent's application under the Debtors (Scotland) Act 1987. It understood the very difficult circumstances that the Respondent found herself in following the unprecedented event of the pandemic. The Respondent took all responsible steps that she could following her being furloughed and made redundant to reduce her outgoing and to find alternative accommodation. Parties had also negotiated a reduction in rent following the pandemic commencing. However the Application before the Tribunal under the Debtors (Scotland) Act 1987 was one which is entirely discretionary on the Tribunal and no changes to any statutory provision for Time to Pay orders and their consideration have been made either temporarily or permanently in terms of the pandemic. The focus of such applications normally being on the affordability of the application and the term that would be taken to repay the debt. However the Tribunal had very clear regard in addition due to its overriding objective to the fact that the Respondent was directly affected by an unprecedented event in addition to these factors as relevant. However the fact that the application terms meant that the debt would not be repaid for a period of 10 years was in the Tribunal's view too disproportionate in balancing the interest of justice of both parties and exercising its discretion in terms of the application by the Respondent.

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.



Legal Member/Chair

9 March 2022

Date