



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 70(1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/20/1437**

**Re: Property at 2F, 3 Glencairn Crescent, Edinburgh, EH12 5BS (“the Property”)**

**Parties:**

**Dr Nikhil Joshi, 1 St Albans Road, Bristol, BS6 7SF (“the Applicant”)**

**Mr Daniel Zaleskis, Ms Helena Sosnowski, 2F, 3 Glencairn Crescent, Edinburgh, EH12 5BS (“the Respondents”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment of Eight thousand eight hundred pounds (£8,800) against the Respondents in favour of the Applicant and a time to pay direction ordering payments at the rate of £100 per week commencing on 15 November 2020.**

**Background**

- 1 By application dated 1 July 2020, the Applicant sought an order against the Respondents for unpaid rent arrears. In support of the application the Applicant submitted Tenancy Agreement between the parties and bank statements evidencing unpaid rent.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 30 September 2020. Due to the imposition of restrictions arising from the Covid-19 pandemic a direction was issued to the parties by the Chamber President confirming that the Case Management Discussion would

take place by teleconference. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondents by Sheriff Officers on 2<sup>nd</sup> September 2020.

- 3 Following submission of the application the Applicant provided an up to date rent account confirming arrears had increased to £8,800. Ms Sosnowski subsequently submitted a time to pay application which was opposed by the Applicant on the basis that the terms of the application were unclear and the debt would take too long to be repaid at the sums proposed.

### **The Case Management Discussion**

- 4 The Case Management Discussion took place by teleconference on 30 September 2020. Mr David Gray, Solicitor from BTO Solicitors LLP, appeared on behalf of the Applicant. Ms Sosnowski was present.
- 5 As a preliminary issue, Ms Sosnowski explained that Mr Zaleskis was no longer residing at the property. However, he was aware of the proceedings and aware that she was attending the Case Management Discussion. The Legal Member was therefore satisfied that she could proceed in his absence.
- 6 The Legal Member explained the purpose of the Case Management Discussion and asked parties to address her on their respective positions.
- 7 Mr Gray explained that the Applicant sought an order for payment of the rent arrears in the sum of £8,800 which was the up to date figure confirmed in the rent statement submitted to the Tribunal. The time to pay application was opposed. Mr Gray was unclear as to whether Ms Sosnowski was offering £100 per week or £100 per month. The former would take around two years to repay the debt whereas the latter would take around 9 years. Neither option was acceptable to the Applicant. Mr Gray also pointed out that arrears were continuing to increase in the absence of rental payments.
- 8 Ms Sosnowski explained that she had been unemployed since losing her job and was relying on money from friends and family. However she hoped to commence employment again in mid October, and the offer was based on the income she would receive. She clarified that would be payments of £100 per week. It was the most she could afford. She accepted the arrears were due in the sum stated by the Applicant.

### **Findings in Fact and Law**

- 9 The parties entered into a Tenancy Agreement which commenced on 6 October 2018.

- 10 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.
- 11 In terms of Clause 7 of the said Tenancy Agreement the Respondent have a contractual obligation to pay rent of £1,100 per month by the 6<sup>th</sup> of each month.
- 12 The last payment of rent by the Respondents to the Applicant was in January 2020.
- 13 As at 30<sup>th</sup> September 2020, arrears of rent in the sum of £8,800 are outstanding.
- 14 The Respondents are due to pay the sum of £8,800 to the Applicant in terms of the Tenancy Agreement between the parties.

### **Reasons for Decision**

- 15 Having considered the written representations from the parties and the verbal submissions at the Case Management Discussion the Tribunal determined it could make a determination of the application and that to do so would not be prejudicial to the interests of the parties. It was clear that the substantive matters were agreed between the parties and there was therefore no requirement for a hearing to be fixed.
- 16 Having considered the terms of the tenancy agreement and rent statement produced by the Applicant, and based on its findings in fact, the Tribunal was satisfied that the Respondents were liable to pay the sum of £8,800. This was not disputed by the Respondents. Having regard to the rent statement submitted by the Applicant in advance of the Case Management Discussion, the Tribunal was content that it could agree an amendment to the application to reflect the updated figure.
- 17 The Tribunal did however consider that the offer of £100 per week which had been put forward by Ms Sosnowski was reasonable in view of the personal circumstances she had outlined. Whilst it would take approximately two years to clear the debt at that rate, the Tribunal was conscious of the increased difficulties that the Respondents had faced, and were likely to face, as a result of the Covid-19 pandemic, and that this was the maximum that could be afforded by Ms Sosnowski at this time. The Tribunal did have sympathy for the Applicant's position but noted that in the event of payments not being made the Applicant would have the right to enforce the order for the whole amount.
- 18 The Tribunal therefore made an order in the sum of £8,800 against the Respondents and a time to pay direction at the rate of £100 per week,

commencing on 15<sup>th</sup> November at which point Ms Sosnowski should be back in employment. For the avoidance of doubt, the order shall be made against both Respondents. Whilst Ms Sosnowski has indicated that Mr Zaleskis is no longer residing at the property, there has been no formal termination of his interest in the lease therefore he remains bound by the contractual obligations under the tenancy agreement.

### **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.**

# Ruth O'Hare

Legal Member/Chair

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**30<sup>th</sup> September 2020**  
**Date**