



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/21/2886

Re: Property at 1 Broomyknowe Drive, Deans, Livingston, EH54 8BY (“the Property”)

Parties:

Red Box Property Ltd, 24 Stewartfield, Edinburgh, EH6 5RQ (“the Applicant”)

Ms Linda Forrest, 1 Broomyknowe Drive, Deans, Livingston, EH54 8BY (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member) and Mary Lyden (Ordinary Member)

Decision

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

Background

This was an application for a payment order dated 20th November 2021 and brought in terms of Rule 70 (Application for civil proceedings in relation to an assured tenancy under the 1988 Act) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant originally sought payment of arrears in rental payments of £3,126.34 in relation to the Property from the Respondent, and provided with its application copies of a short assured tenancy agreement and a rent arrears statement.

The short assured tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 11th January 2022, and the Tribunal was provided with the execution of service.

By e-mail to the Tribunal dated 31st January 2022, the Respondent submitted an application for a time to pay direction.

A Case Management Discussion was held at 10.00 on 14th February 2022 by Tele-Conference. The Applicant's Mr Morris participated, and the Applicant was not represented. The Respondent participated, and was not represented.

Mr Morris confirmed that the instalments offered in the time to pay direction were not acceptable. He had not returned the response form to the Tribunal confirming the Applicant's objection, and confirmed that he would do so.

Mr Morris noted that he had provided information to the Applicant regarding sources of financial assistance which are available to tenants in the Respondent's situation, and he and the Tribunal encouraged the Respondent to make enquiries about those.

The Tribunal considered that in these circumstances it would be appropriate to continue this application to a Hearing on the application for a time to pay direction. The Tribunal explained to the Respondent the need for her to produce evidence of her income and expenditure in order that the Tribunal can properly consider her application at the Hearing.

Thereafter, the Applicant submitted a response form indicating that it objected to the making of a time to pay direction, and on 4th April 2022 an updated rent arrears statement with a request to amend the sum sought in the application to that sum.

Hearing

A Hearing was held at 10.00 on 28th April 2022 by Tele-Conference. The Applicant's Mr Morris participated, and the Applicant was not represented. The Respondent participated, and was not represented.

The Tribunal was invited by Mr Morris with reference to the application and papers to grant an order for payment of the sum of £6,593.34.

The Respondent confirmed that she accepted that this was the correct figure for arrears in rental, and was the sum currently due by her to the Respondent. However, she sought a time to pay direction that this sum be allowed to be paid at the rate of £15.00 per month, which was all that she could afford in her current financial circumstances. She explained that she was to see a debt advisor the following week for advice on her finances.

Statement of Reasons

Section 16 of the *Housing (Scotland) Act 2014* provides as follows:

“16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3) Part 1 of schedule 1 makes minor and consequential amendments.”

Accordingly, the Tribunal has jurisdiction in relation to claims by a landlord (such as the Applicant) for payment of unpaid rental against a tenant (such as the Respondent) under a short assured tenancy such as this.

The Tribunal considered the terms of the short assured tenancy agreement, the updated rent arrears statement, and Mr Morris’s submissions, and was satisfied that this disclosed an outstanding balance due by the Respondent to the Applicant in respect of rent arrears of £6,593.34 as sought. The Respondent accepted that was correct. Accordingly, the Tribunal made an order for payment of the sum sought.

That left the Tribunal to consider the Respondent’s time to pay direction application, which contained an offer to make payment at the rate of £15.00 per month. The Applicant did not accept that offer upon the basis that firstly the Respondent had provided absolutely no vouching or other evidence to support the income and expenditure figures contained in her application, and secondly that the monthly amount offered was entirely inadequate in light of the level of arrears and it would take too long to repay those arrears.

Sections 1 and 1A of the *Debtors (Scotland) Act 1987* as amended provides:

“1.— Time to pay directions.

(1) Subject to subsections (3) to (5) below and to section 14 of this Act, on an application by the debtor, the First-tier Tribunal, on granting decree for payment of any principal sum of money, shall, if satisfied that it is reasonable in all the circumstances to do so, and having regard in particular to the matters mentioned in subsection (1A) below, direct that any sum decerned for in the decree (including any interest claimed in pursuance of subsections (6) and (7) below) or any expenses in relation to which the decree contains a finding as to liability or both such sum and such expenses shall be paid—

(a) by such instalments, commencing at such time after the date of intimation by the creditor to the debtor of an extract of the decree containing the direction, payable at such intervals; or

(b) as a lump sum at the end of such period following intimation as mentioned in paragraph (a) above,

as the First-tier Tribunal may specify in the direction.

(1A) The matters referred to in subsection (1) above are—

- (a) the nature of and reasons for the debt in relation to which decree is granted;
- (b) any action taken by the creditor to assist the debtor in paying that debt;
- (c) the debtor's financial position;
- (d) the reasonableness of any proposal by the debtor to pay that debt; and
- (e) the reasonableness of any refusal by the creditor of, or any objection by the creditor to, any proposal by the debtor to pay that debt.”

The Tribunal did not consider it reasonable to make a time to pay direction. The Respondent accepted the level of arrears accrued and explained that she simply had insufficient income to pay the rent. She did not provide any evidence whatsoever in support of the figures contained in her application.

The Respondent offered to make monthly payments of £15.00 per month. She explained that she could not afford to pay any more. If the Tribunal had granted her application and made a time to pay direction, it would have resulted in repayment taking approximately 37 years. The Tribunal considered such a period for repayment to be clearly unreasonable.

For these reasons, the Tribunal refused to make an order for payment with a time to pay direction.

Decision

In these circumstances, the Tribunal made an order for payment by the Respondent to the Applicant of the sum of £6,593.34.

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: Neil Kinnear

Date: 28 April 2022