



**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/22/3366

Re: Property at 2/2 7 Ellerslie Path, Glasgow, G14 0NZ (“the Property”)

Parties:

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

Mr Peter Swandells, 2/2 7 Ellerslie Path, Glasgow, G14 0NZ (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatriidge (Legal Member) and David Fotheringham (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of £6,343.15 with interest thereon at the rate of 3.75% from the date of the order until payment should be granted in favour of the Applicant. A time to pay direction was made allowing the Respondent to make payment of the principal sum of £6,343.15 by instalments in the sum of £100 per week.

A Procedural Background:

[1] The application was made in terms of rule 70 of the Housing and Property Chamber Rules of Procedure 2017 (the rules). The Applicant submitted the application on 15.9.2022. By email of 9.1.2023 the Applicant updated the sum due by lodging a further rent statement.

[2] Ultimately the following documents were submitted for the application.

1. Tenancy agreement commencing 5.8.2016
2. Rent statement up to 3.1.2023
3. Rent increase letters of 27.1.2021 and 24.1.2022
4. Initial rent statement with application up to 3.9.2022

5. Letters regarding rent arrears from landlord to tenant dated 12.11.2021 and 29.11.2021
6. AT6 form dated 18.1.2022 with execution of service by Sheriff Officers on 20.1.2022
7. Notice to Quit dated 18.1.2022 for the date of 28.6.2022 with execution of service by Sheriff Officers on 20.1.2022
8. S 33 Notice dated 18.1.2022 with execution of service by Sheriff Officers on 20.1.2022
9. S 11 notice and email sending same on 19.1.2022

B The Case Management Discussion:

[1] A Case Management Discussion (CMD) was held on 17.1.2023. The notifications and papers were served on both parties. The Applicant was represented by Mr Adams. The Respondent Mr Swandells took part in the CMD.

[2] Mr Swandells explained that he had not received the updated rent statement but that he had been in contact with Mr Mark Kennedy of the Applicant and that he agreed that the currently outstanding amount was as stated in the up to date rent statement. He agreed the arrears had accrued as stated. He explained that he had a business and had been paying his rent and then his partner, who resided at another property and with whom he has a 5 year old child, became ill. He was engaged fully in her care until she sadly passed away in June 2021. In that time someone else had been running his business for him but had been running the business into the ground and he lost the business. He became depressed and simply put his head in the sand and did not address the then rising rent arrears. He has his 5 year old son living with him and his son recently started school and is receiving bereavement counselling. He himself is now back in employment part time for 16-20 hours per week, having had help from Mr Kennedy to engage with the Job Centre. He works part time to ensure he can take and collect his son from school. He stated he finally worked through his financial situation recently and make a realistic calculation last night and is offering £100 per week as payment towards the rent arrears. This is over and above the payment of the ongoing rent. He receives benefits for his son, Universal Credit pay his rent and he can pay the £100 per week from his part time employment income of about £265 per week. He has calculated that taking into account his outgoings of electricity, gas, food and Council Tax from his income and is confident he can afford the payments. He has contacted Universal Credit so that the rent is not paid into his own account anymore. He had misunderstood the system and thought the rent payments were made directly to the landlord when they were paid to his account and thus even while he was on Universal Credit the arrears had increased. He now knows that this is not the case. Unfortunately he had not saved up funds. He had only started to address the situation at the end of November 2022 because of his own problems. He did not fill in the financial form but had worked it all through and was clear that he needs to set up a payment plan. He absolutely wishes to clear the arrears.

[3] Mr Adams on behalf of the Applicant stated that there had been a long and intense effort by the landlord to get the Respondent to address the arrears issues. The landlord had arranged a Tenant Grant Fund payment for the tenant paid on 19.5.2022 of £5,175 and had also more recently arranged a further payment towards the arrears of £240

from the "Here For You Fund" following an appointment with the Welfare Benefits Advisor the landlord had arranged for the tenant for 14.10.2022. However, all the other direct debit payments from the tenant had bounced. No concrete repayment steps had been taken by the tenant. The debit and credit charges in the rent statement shown in 2018 appear to be due to a changeover of computer systems and resulted in a £0 sum. The arrears are as stated on the latest statement. Because the Applicant was aware that the updated statement had not been provided 14 days prior to the CMD the Applicant was not seeking to amend the sum for the order at this stage.

[4] Both parties agree that the sum currently owed in rent arrears at the time of the application was £6,343.15 and that the sum was still due. Both stated a payment of £100 per week towards the arrears would be reasonable and realistic.

C Findings in Fact:

1. The parties entered into a Short Assured Tenancy Agreement for the property starting 5.8.2016. The initial end date was 28.2.2017 and the tenancy continued from month to month thereafter.
2. The rent was originally £510 per calendar month payable in advance and was then increased as shown on the rent statement
3. The current rent is £583.63 per month.
4. As at 17.1.2023 rent arrears of £7,854.04
5. The application was seeking payment for the arrears up to and including 3.9.2022 which were £6,343.15.
6. The tenancy agreement in clause 4.3 allows for interest payments at the rate of 2% above the base rate of the Bank of Scotland.
7. At the time of the application that base rate was 1.75%.
8. The parties are agreed that this should be paid in instalments of £100 per week.
9. At this rate payment of the full sum will take about 1 year and 3 months.

D Reasons for the Decision:

[1] Relevant legislation:

In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

(d) discussing what witnesses, documents and other evidence will be required;

(e) discussing whether or not a hearing is required; and

(f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Power to determine the proceedings without a hearing

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties

[2] The Tribunal make the decision on the basis of the written evidence lodged by both parties and the evidence of the parties at the CMD. The facts in the case are not disputed. The rent outstanding as of 3.9.2022 based on the amounts shown in the rent statement and claimed in the application is £6,343.15. The sum of arrears claimed remained outstanding as of the date of the CMD. There was no defence to the action. It is not in dispute that the sum of £6,343.15 rent arrears is due by the Respondent to the Applicant.

The Respondent asked the Tribunal to allow for payment by instalments and provided detailed financial information at the CMD.

The Applicant is entitled to payment of the sum of £6,343,15.

The Tribunal grants the order as rent lawfully due to the Applicant by the Respondent had not been paid.

[3] Given the provision in clause 4.3 of the tenancy agreement the Tribunal in terms of rule 41A of the Procedure Rules also considers an interest rate of 3.75 % per annum as sought by the Applicant as appropriate.

[4] The Tribunal was satisfied that it was reasonable in all the circumstances to grant a time to pay direction, having regard to the nature and reason of the debt, the action taken by the Applicant to assist the Respondent in paying the debt, the Respondent's financial position, the reasonableness of the Respondent's proposal and the Applicant's agreement to the proposal.

From the information on the application for time to pay direction the Tribunal is satisfied that the payment rate proposed is realistic and the debt would be cleared within less than 2 years. By way of further explanation, if the financial situation of the Respondent improves in future and he may then be in a position to clear the debt quicker, he can make additional payments. The payment order with time to pay at the rate of £100 per week would not prevent such additional payments taking place.

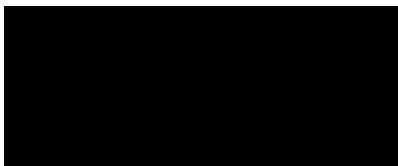
[5] The Respondent stated he would set up a direct debit for the payments. To allow this to happen the Tribunal will set the date of the first payment due in terms of the order to be 27 January 2023 after intimation of this order and weekly thereafter, but the Respondent is asked to arrange for the first payment to be made as soon as possible before that date.

E Decision

The Tribunal grants an order against the Respondent for payment of the sum of £6,343.15 to the Applicant and interest thereon at the rate of 3.75% per annum from the date of this order until payment. The Tribunal also makes a time to pay direction allowing payment to be made by instalments of £100 per week. The first payment is to be made by 27 January 2023 and weekly thereafter.

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.



Petra Hennig McFatridge

Legal Member/Chair

17.1.2023

Date