



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

Chamber Ref: FTS/HPC/CV/22/3504

Re: Property at Flat 40/1 Redbraes Place, Edinburgh, EH7 4LL (“the Property”)

Parties:

Ms Susan Dunn, 16 La Chaumiere De l'Orme, La Rue Au Blancq, Grouville, Jersey, Channel Islands, JE3 9AH (“the Applicant”)

Mr Jack Drummond, Ms Samantha Hadden, 31/5 Lauriston Place, Edinburgh, EH3 9EN; Flat 1F Easter Langside Drive, Dalkeith, EH22 2FH (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatrige (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order for the amount of £2,386.81 by the Respondents to the Applicant together with interest at the rate of 5% per annum from the date of the decision on 8 February 2023 until payment should be granted.

A Background

This is an application for payment of outstanding rent lodged with the Tribunal on 26.9.2022 in terms of S 71 (1) of the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act) and Rule 111 of the Procedure Rules.

The Applicant had lodged the following documents in evidence:

- a) the Private Residential Tenancy Agreement (PRT) for the property commencing 11.3.2019
- b) Statement of Account up to and including 20.1.2021 prepared on 26.5.2021
- c) Rent statement up to and including 1.10.2020 prepared on 26.5.2021

- d) letter by Jackson Boyd Lawyers dated 9.5.2022 to Jack Drummond with certificate of service by Sheriff Officers
- e) letter from Jackson Boyd Lawyers to Samantha Haddon dated 18.5.2022 with track and trace receipt
- f) Safe Deposit Scotland deposit certificate

The application was accepted on 1.11.2022. A Case Management Discussion (CMD) was scheduled for 8.2. 2022. The Respondents was notified of the application and the CMD date and manner of joining through service by Sheriff Officers effected on 13.12.2022. The Tribunal was satisfied that sufficient and correct notice of the CMD and application details had been given to the Respondent.

Ms Hadden wrote to the Tribunal on 7.2.2023 advising she would not be participating in the CMD but referred to a financial statement she had lodged. The Tribunal was unable to locate this as a document previously received and asked her to re-submit this prior to the CMD. Ms Hadden submitted a Time to Pay Direction application disclosing her financial situation and offering £10 per month towards repayment on the day of the CMD.

B The Case Management Discussion

The Applicant's legal representative Mr McKeown attended the telephone conference. The Respondents did not attend.

Mr McKeown explained that there had been no further payments of rent from the Respondent and the amount outstanding was still £2,386.81. He stated a repayment rate of £10 per month as offered would not be reasonable as it would take almost 20 years to clear the debt. He further advised that the request for 8% interest per annum were based on the judicial rate of interest and confirmed there was no contractual interest provision in the tenancy agreement.

There were no written representations from the first named Respondent in the case.

C Findings in Fact

Based on the documents submitted and the information provided at the CMD in the case the Tribunal is satisfied that the following facts have been evidenced:

1. The Applicant and the Respondents entered into a Private Residential Tenancy Agreement for the property commencing on 11.3.2019. (Clause 6)
2. Rent of £650 per calendar month was payable on the first day of the month in advance for the following month (Cause 8).
3. The tenancy ended on 13.10.2020.
4. As at 8.2.2023 the outstanding rent arrears were £2,386.81.
5. The Respondents were joint tenants of the property and thus jointly and severally liable for the rent arrears.
6. Ms Hadden moved out of the property on or about January 2020 but the joint tenancy was not terminated at that time.
7. At the rate of £10 per months it would take more than 19 years to clear the arrears.

D: Reasons for Decision:

1. Relevant provisions in the Procedure Rules:

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

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.

Interest on orders for payment

41A.—(1) The First-tier Tribunal may include interest when making an order for payment.

(2) Where paragraph (1) applies, the interest is to be at the rate either—

- (a) stated in the relevant tenancy agreement, or
- (b) ordered by the First-tier Tribunal, and running from the date of the decision of the First-tier Tribunal."

2. The documents lodged are referred to for their terms and held to be incorporated herein. The Tribunal makes the decision on the basis of the documents lodged by the Applicant and Ms Hadden and the information given at CMD.

3. The Tribunal did not consider that there was any need for a hearing in terms of rules 17 and 18 as there had been no defence lodged by the Respondents and the application had not been opposed. The Tribunal considered that the material

facts of the case were not disputed. Ms Hadden had not disputed the amount of arrears and had offered payment by instalments in writing. In terms of Rule 18 of the Rules of Procedure the Tribunal is satisfied that it is not contrary to the interests of the parties to make a decision at the CMD and that the information available in document form and from the Applicant at the CMD allows sufficient findings to determine the case. Ms Hadden had advised the Tribunal that she would be unable to attend the CMD due to her attending a funeral. She had not made a request for a postponement as she stated that all she would say at the CMD is what she had already put forward in her written representations. The Tribunal thus considered that a decision could be made at the CMD without the need for further procedure.

4. The Respondents had fair notice of the representations of the Applicant forming the reasons for the application and the arrears as set out in the Statement of Account and had not challenged these. The facts of the case are thus not in dispute.

5. The Tribunal is satisfied that the Respondents had entered into a Private Residential Tenancy Agreement with the Applicant for the property and had failed to make the necessary rental payments as shown in the Statement of Account lodged. The Respondents had not put forward any reason why the rent should not be due. The Tribunal is satisfied that the rent arrears stated in the application remaining outstanding on the date of the CMD.

6. Whilst it is not disputed that Ms Hadden moved out of the property in January 2020, the tenancy was not brought to an end at that time and thus the joint tenants remain jointly and severally liable for the rent as far as the landlord is concerned. I have sympathy for Ms Hadden, who engaged with the Tribunal process and stated that she cannot afford payment of the full outstanding arrears and also queried why she should be liable if she and Mr Drummond had agreed that he would pay the rent in full after she moved out. However, as she remained a tenant of the property she continues to be liable for the rent to the landlord. She may have the option of seeking redress against Mr Drummond if there was indeed an internal agreement between the Respondents, however, this does not affect the issue of joint and several liability for the arrears in the contractual relationship with the Applicant and landlord.

7. I have considered the application for a Time to Pay Direction made by Ms Hadden on 8.2.2023. The Tribunal was not satisfied that it was reasonable in all the circumstances to grant a time to pay direction in terms of S 1 of The Debtors (Scotland) Act 1987, 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 the Tribunal is satisfied that the payment rate proposed is not reasonable and realistic as it would take more than 19 years to clear the debt at a payment rate of £10 per months.

8. There are no provisions for interest payments on rent arrears in the PRT. However, in terms of Rule 41 A of the Procedural Rules the Tribunal can make

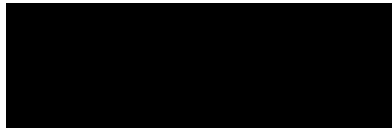
an award of interest. The Tribunal considers that in this case interest on the outstanding amount should be paid at the rate of 5 % per annum, which is 1% above the current Bank of England base rate of 4%.

Decision:

The Tribunal grants the order for payment of the amount of £2,386.81 by the Respondents to the Applicant together with interest at the rate of 5% per annum from the date of the decision on 8 February 2023.

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

8.2.2023

Legal Member/Chair

Date