

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”)

Chamber Ref: FTS/HPC/CV/21/1119

Re: 7 Annick Road, Dreghorn, North Ayrshire, KA11 4EY
 (“the Property”)

Parties:

Mr Scott Milligan, 39 Broomlands Road, Dreghorn, North Ayrshire, KA11 4EX
 (“the Applicant”)

Ms Jemma O’Brien, 29 Ninians Terrace, Kilwinning, North Ayrshire, KA13 7PN
 (“the Respondent”)

Tribunal Member:

Pamela Woodman (Legal Member)

Present:

The decision was taken on the papers without the need for a case management discussion to be held. The scheduled case management discussion for 28 July 2021 at 2pm was discharged.

Decision

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

Background

1. The Applicant made an application to the Tribunal under section 71(1) of the 2016 Act and in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended, (“**2017 Regulations**”). More specifically, the application was made in terms of rule 111 (*Application for civil proceedings in relation to a private residential tenancy*) of the HPC Rules.

2. The Applicant sought an order for payment in the amount of £1,040, comprising rent arrears of £760, property clearance costs of £150, cleaning costs of £60 and costs for plastering damaged wall of £70.
3. In response to the application and accompanying case papers being served on the Respondent, the Respondent submitted a time to pay direction application, by virtue of which she admitted liability for the Applicant's claim against her.
4. Mrs Susan Allan of Secure Letting & Sales, as representative for the Applicant ("**Applicant's Representative**"), provided the response to the time to pay application on the requisite form, which response was that the Applicant was content with the proposal for time to pay.
5. Therefore, it was for the Tribunal to determine whether or not it was reasonable in all the circumstances to grant a time to pay direction (in terms of the Debtors (Scotland) Act 1987, as amended), having regard to the following matters:
 - 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.

Findings in fact

6. The Respondent admitted liability for the amount claimed by the Applicant, namely £1,040. Accordingly, the Respondent is liable to pay the amount claimed.

Reasons for decision

7. The Respondent admitted liability.
8. In relation to the application for a time to pay direction:
 - a. The Respondent made a proposal to pay in instalments of £40 per month, which was acceptable to the Applicant.
 - b. Payment of £1,040 at the rate of £40 per month would require that 26 monthly payments be made.
 - c. A rental statement and invoices in respect of the costs claimed had been provided by the Applicant's Representative.

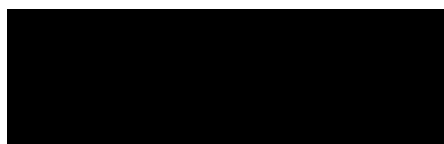
- d. The Applicant's Representative had provided copy correspondence which indicated that a payment plan at a rate of £200 per month had been arranged in 2020 but that the Respondent did not make payment under that payment plan.
 - e. In her application for a time to pay direction, the Respondent disclosed that (i) she had got into the debt as a result of "financial struggles", (ii) she had other debts but did not disclose the nature of those debts or to whom they were owed, and (iii) she expected to go part-time in her employment in September 2021. The Respondent also stated that £40 per month was all that she could afford to pay.
 - f. Based on the information provided by the Respondent in the application for a time to pay direction, the Respondent's net income exceeded her net outgoings by more than £40 per month. Whilst it was not known what her net income would become once she went part-time, the proposal was made by the Respondent and she indicated that this amount was affordable.
9. The Tribunal was satisfied, on the balance of probabilities, that the Respondent's application for a time to pay direction should be made.

Decision

10. The Tribunal decided to grant an order for payment against the Respondent for payment of the sum of £1,040 (one thousand and forty pounds sterling) to the Applicant.
11. The Tribunal decided that a time to pay direction should be made, such that the Respondent must pay the amount so ordered to be paid in monthly instalments of £40 (forty pounds sterling) each.

Right of Appeal

In terms of Section 46 of the Tribunals (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)

24 July 2021

Date