



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/23/1008

Re: Property at Araucaria, Drumuillie, Boat Of Garten, PH24 3BX (“the Property”)

Parties:

Drumuillie Ltd, Drumuillie Ltd, Drumuillie Lodge, Boat Of Garten, PH24 3BX (“the Applicant”)

Mr Richard Fforde, The Glen, Clon Brugh, Sandyford, Dublin, Ireland (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to an order for payment for £8817.71 (EIGHT THOUSAND EIGHT HUNDRED AND SEVENTEEN POUNDS AND SEVENTY ONE PENCE) paid as per the Time To Pay Direction at £400 per month from 8th January 2024.

Background

Background

1. An application was received by the Housing and Property Chamber dated 27th March 2023. The application was submitted under Rule 111 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on the Respondent not maintaining rent payments.

2. On 19th May 2023 all parties were written to with the date for the Case Management Discussion (“CMD”) of 22nd June 2023 at 10am by teleconferencing. The letter also requested all written representations be submitted by 9th August 2023.
3. On 13th June 2023 the Respondent emailed to say that he required more time to get legal advice and requested that the case be postponed. This was allowed and the case was postponed.
4. On 7th August 2023 all parties were written to regarding the new CMD date of 11th September 2023.
5. On 11th September 2023, a further email from the Respondent was received advising that he admitted the arrears and that he objected to the way he was treated at the end of his tenancy. The Applicant’s representative submitted an updated rent account showing arrears of £8817.71. On the day of the CMD this was crossed to both parties.
6. A CMD was held 11th September 2023 at 10am by teleconferencing. The Applicant was represented by Mrs Alice Cochrane, Tughan & Cochrane Limited. The Respondent was present and represented himself. Mrs Cochrane said that she was seeking a payment order for £8817.71. She said that there had been four months rent paid during the tenancy. A payment plan has been resisted by the Applicant due to the low level of payments. The tenancy ended on 21st April 2023. The Respondent admitted the debt. He would like to try to make an arrangement to pay. He has spoken to Shelter Scotland for advice and gone over his income. Since then he has had his current position extended until 2026 which means that he is in a better financial position. He has made an alteration to the figures done by Shelter Scotland to take into account the extension of his contract. The Tribunal discussed if he had considered a Time To Pay direction. A discussion followed regarding a Time To Pay Direction (“TTPD”). It was explained that this would allow the Respondent to pay up the outstanding arrears if the Applicant was in agreement. The Tribunal noted that the Respondent will need to be active in applying for the TTPD. He will need to contact the Housing and Property Chamber to request that a TTPD be sent to him. If he is looking to seek further money advice to help him complete the TTPD then this appointment will need to be made and attended in advance of the next CMD so that the Applicant can consider the contents of the TTPD. Once the TTPD has been completed it will need to be lodged with the Housing and Property Chamber. There should be no less than 14 days before the next CMD. The Applicant and Tribunal will then be sent a copy of it. If the Applicant agrees to the amount offered then the case will be dealt with administratively and will not proceed to the CMD. If the amount offered is not accepted by the Applicant then the case will proceed to the CMD. The Tribunal noted that a TTPD allows for the outstanding amount to be paid in instalments. Should those instalments stop before the debt is repaid then the Applicant is entitled to a full order for the remaining amount. The Tribunal also noted that should the Respondent decide not to proceed with a TTPD it will be most likely that at the next CMD the Tribunal will grant the full order as the debt has been admitted. The Respondent understood these points. He was willing to look at lodging a

TTPD and will get further money advice from Shelter Scotland. He is looking to start a payment plan from October 2023 and will repay the debt in 17 months. He will make a reduced payment at the end of September 2023. He will try to pay more when he can. The Tribunal noted that the Applicant is under no obligation to accept to offer. It also noted that the Respondent should make sure that he continues to make payments at least the same agreed amount each month regardless of whether he has paid more than the agreed level in any previous payments. Mrs Cochrane said that the Applicant is reasonable and may accept the offer of repayment in 17 months. She is content for the matter to proceed for consideration of a TTPD. The Tribunal will look for a new CMD date to be set at the end of November/Beginning of December. Mrs Cochrane will lodge an up to date rent account once the TTDP has been lodged or prior to the next CMD. The case was adjourned to a further CMD to allow for a TTPD to be lodged by the Respondent and considered by the Applicant. A new CMD date was set for 29th November 2023.

7. On 14th November 2023 the Respondent emailed the Housing and Property Chamber lodging a TTPD which offered to pay the outstanding amount at £400 per month.

The Case Management Discussion

8. A CMD was held 29th November 2023 at 10am by teleconferencing. Ms Olga Dean-Hart was present for the Applicant. The Applicant was represented by Ms Alice Cochrane, letting agent. The Respondent was present and represented himself. The Tribunal proceeded in terms of Rule 29 of the Rules.
9. Ms Cochrane said that there have been no payments since the last CMD. She believed that there were to be payments made by the Respondent in September and he would start his payment plan in October. However, there have no payments for over a year. The Applicant does not have faith that payments will be made.
10. A discussion followed regarding the TTPD. The Respondent said that he has taken advice from Shelter Scotland. He has consolidated some of his finances to make his payments more affordable. He has also sold his car. It has meant payment penalties. He now has made an offer at an affordable rate. He will be able to pay off the sum due in 22 payments with the last payment for £417. 71.
11. Ms Cochrane said that she had significant concerns that the Respondent has accrued further rent debts in Pitlochry and Yorkshire. She noted that the debt in Pitlochry had been before the Housing and Property Chamber. It also had been under the name Fiennes. Ms Cochrane said that there were photos of the Respondent to prove that it was him. She said that there were two County Court Judgements against him in Yorkshire. Ms Cochrane said that she has made investigations regarding these points. The Respondent disputed these allegations. He said that he had stayed at the property in Pitlochry but that this was his second cousin's property. He did not run up any rent arrears as he did not have any liability for the rent. Ms Cochrane and Ms Dean-Hart reiterated

their objection to getting the TTPD being granted. Ms Dean-Hart said that the Respondent's address is a fictitious address. The Applicant wishes to get the full order granted when the Respondent is still traceable. The Respondent disputed that the address was fictitious. The Tribunal noted that it did not have any evidence before it to prove these points so could not take this into further consideration without substantive evidence. The Respondent would be next paid on 6th December 2023. He could start payments from 8th December 2023. He intended to pay the remaining amount of £17.71 as an addition to the end of the payment Schedule. He will consider making this with the first payment.

12. The Tribunal considered that the Respondent has presented a reasonable offer to repay the debt. It will be repaid in less than 24 months. The Tribunal noted what the Applicant had raised in terms of other debts had not been substantiated with evidence that was persuasive to not granting an order for payment as per the TTPD.
13. The Tribunal was satisfied that the outstanding amount for £8817.71 was due to the Applicant by the Respondent. This was admitted by the Respondent. The Tribunal was satisfied that it was appropriate to grant the order in terms of the TTPD at £400 per month from the 8th January 2024 and that it was appropriate to grant an order accordingly. It is not completely prejudicial to the Applicant to wait for payments of the Order as per the TTPD. The objection to the TTPD is that the Respondent will not pay and that he will move from his fictitious address. Given that the first payment is shortly after the end of the appeal period, if the Respondent fails to pay on 8th January 2024 then the Applicant will be able to apply for the Order to be converted to a full payment order. This does not need any further Tribunal direct input as it can be done through the Housing and Property administration. The issue regarding the Respondent's address was not evidenced. Further if he does not live there then it will be immaterial when he is served with a full order if he does not maintain payments. The Respondent has taken money advice and has been addressing his debt so that he can make repay the debt within 24 months.

Findings and reason for decision

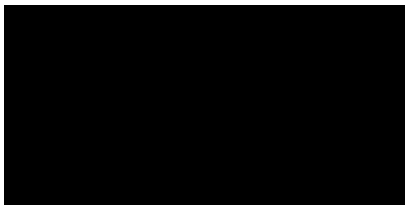
14. A Private Rented Tenancy Agreement commenced 21st July 2022.
15. The Respondent persistently failed to pay his rent charge of £2000 per month. The rent payments are due to be paid on 21st day of each month.
16. The debt is admitted by the Respondent.
17. The Respondent has taken money advice from Shelter Scotland. This has allowed him to propose a repayment rate of £400 per month which would repay the arrears within 24 months.
18. It is reasonable to grant an order based upon the TTPD. Failure to maintain this will mean that the Applicant can ask for the Order to be converted to a full payment order.

Decision

19. The Tribunal found that the Applicant was entitled to be granted an order for payment for £8817.71 to be repaid as per the TTPD at £400 per month.

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.



29th November 2023

Legal Member/Chair

Date