



Decision 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/23/3056

Re: Property at 22 Thomson Court, Uphall, EH52 6BY (“the Property”)

Parties:

Ms Lesley Fraser, 24 Allee Du Pin, 11300 La Digne D'Aval, France (“the Applicant”)

Mr Robert Short, Ms Emma Eyre, 22 Thomson Court, Uphall, EH52 6BY (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) made a payment order in favour of the Applicant and against the Respondents in the sum of two thousand nine hundred pounds (£2900) with interest at the rate of 5% per year until paid in full and the tribunal granted a time to pay direction requiring the Respondents to pay this debt at the rate of £50 per week starting no later than one week after intimation of this order.

Background

1.This application for a payment order in terms of Rule 70 of the tribunal rules of procedure was first lodged with the tribunal on 4th September 2023 along with a related application for a possession order with reference FTS/HPC/23/EV/ 3055 and these applications were accepted by the tribunal on 18th September 2023. A case management discussion was fixed for 18th December 2023 at 10am.

Case Management Discussion

2. The Applicant did not attend the case management discussion but was represented by Mrs Mullen solicitor of TC Young solicitors. The Respondents both attended the case management discussion and represented themselves.

3. The tribunal had sight of the application, a paper apart, a tenancy agreement, a Form AT5 and a rent statement. Mrs Mullen had also lodged a request in terms of the tribunal rules of procedure to increase the sum being requested in the application to £2900. The Respondents had admitted the debt and accepted that they owed this sum. They had lodged a time to pay direction application requesting to pay off the debt at the rate of £50 per week.

4. The parties had entered into a short, assured tenancy agreement at the property with effect from 5th October 2015. The monthly rent payable in terms of the tenancy agreement is £650 per month payable on the 1st of each month. At the time of the case management discussion rent arrears had accrued in terms of the tenancy and the respondents accepted that they owed £2900 in outstanding rent arrears to the Applicant. They had lodged details of their financial position.

5. Mrs Mullen opposed the time to pay direction being imposed and asked for an open payment order. She explained that attempts to pay the rent arrears at £50 per week by the Respondents had been tried before and the payment plans had not been successful. The Respondents were not paying the rent. They had lodged details of their financial position and Mrs Mullen submitted that they could afford to pay more than they were offering to pay. The Applicant's opposition to the time to pay direction application was based mainly on her concern that the Respondents would simply not sustain payment of this extra amount per week if permitted.

6. Ms Eyre advised the Tribunal that they had fallen into difficulty due to the increase in the cost of living and her working pattern had required to change and this meant she had been earning less money. The Respondents have three young children, and they were trying to organise their debt and start to pay everything back. She said that their financial situation had improved as an earnings arrestment has been completed and they were confident they could pay the rent and an extra £50 per week. They had debts which they still required to sort out and with the 3 children and the costs they had, they considered this offer of £50 per week was what they could afford.

7. Mrs Mullen was seeking interest at the rate of 8 % on the payment order. Ms Eyre did not make any submission to the Tribunal on this point, and it was accepted that this was a matter within the Tribunal's discretion.

8. The Tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

9. The parties entered into a short, assured tenancy at the property with effect from 5th October 2015.

10.The initial tenancy ran until the 5th of April 2016 and the agreement indicated that if neither party brought it to an end it would continue on a monthly basis thereafter.

11.The tenancy has continued on a rolling monthly basis.

12.The monthly rent payable in terms of the tenancy agreement is £650 per month.

13. Rent arrears have accrued in terms of the tenancy agreement and the Respondents accepted that they owed £2900 to the Applicant in relation to rent arrears accrued under the tenancy agreement.

14.Previous attempts to arrange to pay off the rent arrears have not been successful.

15.The Respondents are a family of five with 3 children and are both working and offer to pay the sum off at £50 per week.

16.The sum of £2900 is lawfully due by the Respondents to the Applicant.

Reasons for Decision

17.The Tribunal was satisfied that it was reasonable to grant a payment order given the rent arrears accrued and the fact that the previous payment plan had not succeeded. The Tribunal had regard to the relevant factors to be taken into account in terms of the Debtors (Scotland) Act 1987 and considered that it was appropriate to grant the Time to Pay Direction request and made an order requiring payment at the rate of £50 per week, noting that the debt would be paid off within 14 months at this rate.

The Tribunal considered the imposition of interest and considered that a rate of 5% was appropriate to reflect the use value of the money when the debt was incurred.

Decision

The Tribunal made a payment order in favour of the Applicant and against the Respondents in the sum of two thousand nine hundred pounds (£2900) with interest at the rate of 5% per year until paid in full and the tribunal granted a time to pay direction requiring the Respondents to pay this debt at the rate of £50 per week starting no later than one week after intimation of this order.

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/Chair

18.12.23
Date