



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/23/3583

Re: Property at 34 Pine Court, Cumbernauld, G67 3AY (“the Property”)

Parties:

Ms Julia Fielden, 2A Westmount Park, Newtownards, Co Down, BT23 4BP (“the Applicant”)

**Mr Garry Gordon Burns, 29 Ayr Street, Catrine, Mauchline, Ayrshire, KA5 6RN
the First Respondent**

Ms Victoria Snoddy, 25 Adelaide Road, Kirkcaldy, Fife, KY2 6FA (“the Second Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member)

Decision (in absence of the First Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be granted in favour of the Applicant in the sum of £8042.13 with interest thereon at 4% above the base rate of the Bank of Scotland plc. The Tribunal made a time to pay direction in respect of the Second Respondent with instalments due in the sum of £300 per month.

Background

1. This is an application made in the period between 10th October and 2nd November 2023 in terms of Rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”) seeking an order for payment for rent arrears and costs for damage to the Property in the sum of £8042.13. The Applicant’s representative lodged a copy of a private residential tenancy agreement between the Applicant and the First Respondent, which commenced on 9th March 2022 and incorporated a guarantor agreement signed by the Second Respondent. The Applicant’s representative also lodged a rent statement and invoices in respect of the alleged damage.

2. The application and notification of a forthcoming Case Management Discussion was served by Sheriff Officers on the First Respondent on 21st and the Second Respondent on 20th December 2023.
3. By email dated 6th February 2024, the Second Respondent lodged an application for a time to pay direction offering payment in the sum of £200 per month.
4. By email dated 13th February 2024, the Applicant representative lodged video evidence.

The Case Management Discussion

5. A Case Management Discussion (“CMD”) took place by telephone conference on 13th February 2024. The Applicant was represented by Mr John MacAulay, Solicitor. The First Respondent was not in attendance. The Second Respondent was in attendance.
6. The Tribunal considered the terms of Rule 29. The Tribunal determined that the requirements of Rule 17(2) had been satisfied, and it was appropriate to proceed with the application in the absence of the First Respondent.
7. Mr MacAulay explained the background to the application, and that previous applications had been made in respect of eviction and rent arrears with a CMD on 17th May 2023. The application for an order for payment had been withdrawn at the previous CMD as the First Respondent was due to take up employment with the Second Respondent and submitted that an order against her would jeopardise his employment and her business. No payment was received thereafter by the Applicant.
8. Upon inspection of the Property after the tenancy ended it was discovered that the Property had been left in bad condition. The following sums were claimed and vouched for with invoices previously lodged:
 - (i) Carpets - £890
 - (ii) Decorating - £550
 - (iii) Cleaning - £300
 - (iv) Waste removal - £650
 - (v) Pest control - £954
9. Mr MacAulay moved the Tribunal to grant an order for payment in the sum of £8042.13, which was comprised of the rent arrears, plus the costs for damage, after deduction of the tenancy deposit. Mr MacAulay submitted that interest should be granted thereon at 4% above the base rate of the Bank of Scotland PLC, as provided for in clause 38 of the tenancy agreement.
10. The Applicant’s position was that the Second Respondent’s offer of £200 would take over three years to pay off, and an offer of £300 per month would be preferable.

11. The Second Respondent did not dispute the sum sought. She had not been aware that no payment had been made by the First Respondent. She had received a video of the damage to the Property. It had been her understanding that she could only be liable for around £1500, as she thought the Respondent would be evicted if three months' rent was outstanding.
12. The Tribunal explained that it had to have regard to the matters set out in section 1A of the Debtors (Scotland) Act 1987 ("the 1987 Act"), namely:
- (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.
13. There was some discussion about the Second Respondent's family circumstances and income and expenditure. The Second Respondent said she would be in a position to offer to pay £300 per month, and she did not wish further time to take advice or consider her position.

Findings in Fact

- 14.
- (i) The Applicant and the First Respondent entered into a private residential tenancy agreement which commenced on 9th March 2022 with monthly rent due in the sum of £575.
 - (ii) The Second Respondent agreed to be guarantor for the First Respondent and signed the guarantor agreement incorporated within the tenancy agreement on 9th March 2022.
 - (iii) The First Respondent failed to make payment of rent lawfully due.
 - (iv) The tenancy ended in or around July 2023.
 - (v) The First Respondent breached the terms of the tenancy agreement by failing to take reasonable care of the Property, failing to pay the reasonable cost of repairing or replacing damaged contents, and failing to dispose of rubbish.

- (vi) The cost to the Applicant of rectifying the First Respondent's breaches amounts to £3344.
- (i) In terms of the guarantor agreement, the Second Respondent has guaranteed all payment of rent, any other obligations, and payment due to the Applicant which the First Respondent is required to pay.
- (vii) The Second Respondent is jointly and severally liable for the First Respondent's debt.
- (viii) It is reasonable to make a time to pay direction with instalments by the Second Respondent to the Applicant in the sum of £300 per month.

Reasons for Decision

15. There was no appearance or representations from the First Respondent. Rent lawfully due by the First Respondent has not been paid. The First Respondent has breached the terms of the tenancy agreement by failing to take reasonable care of the Property, failing to pay the reasonable cost of repairing or replacing damaged contents, and failing to dispose of rubbish. In terms of the guarantor agreement, the Second Respondent is jointly and severally liable for the sums sought.
16. The Second Respondent did not dispute the sums claimed, and considered the sum of £300 per month to be acceptable and affordable. The sum of £300 was acceptable to the Applicant. The Tribunal had regard to the matters set out in section 1(a) of the 1987 Act and found it was reasonable to grant a time to pay direction with instalments in the sum of £300 per month.

Decision

17. The Tribunal determined that an order for payment in the sum of £8042.13 should be granted against the First and Second Respondents in favour of the Applicant with interest at the rate of 4% per annum above the Bank of Scotland PLC base rate from the date of decision until payment. The Tribunal made a time to pay direction in respect of the Second Respondent whereby payments are due monthly in the sum of £300.

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.

Helen Forbes

Legal Member/Chair

13th February 2024

Date