



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/CV/24/0056

Re: Property at 61 Gartlea Rd, Airdrie, Scotland, ML6 9JN (“the Property”)

Parties:

Mr John Curley, Mrs Pauline Curley, 119 Cromarty Road, Airdrie, Scotland, ML6 9RL (“the Applicant”)

Ms Joyce Bennett, 94 Burleigh Street, Coatbridge, ML5 4JH (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment against the Respondent in favour of the Applicant in the sum of £3,617.33 be made.

Background

1. By application received on 5 January 2024, the Applicant sought a payment order in the sum of £3,465 against the Respondent in respect of rent arrears arising from a former tenancy of the Property, in terms of Rule 111 of the Regulations. The sum sought was thereafter amended to £3617.33.
2. Supporting documentation was submitted in respect of the application, including a Rent Statement and a copy of the Tenancy Agreement.
3. A Legal Member of the Tribunal with delegated powers from the Chamber President subsequently issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations on 5 April 2024. A Case Management Discussion

("CMD") was assigned for 16 July 2024. Notification of the CMD and copies of the case papers were served on the Respondent by Sheriff Officer on 12 June 2024. Written representations were to be lodged by 2 July 2024.

4. On 28 June 2024, the Respondent submitted a completed Time to Pay Application to the Tribunal Administration. This was circulated to the Applicant who then emailed a Response Form to the Tribunal Administration on 4 July 2024, rejecting the Time to Pay offer which had been made by the Respondent. The Respondent was notified of same and parties were advised that the matter would therefore be considered by the Tribunal at the CMD.

Case Management Discussion

5. The CMD took place by telephone conference call on 16 July 2024 at 10am. The Applicants, Mr John Curley and Mrs Pauline Curley were in attendance, accompanied by their adult daughter, Ms Emma Curley (as she had been mentioned in some of the representations lodged). The Legal Member delayed the start of the CMD for approximately 5 minutes to see if the Respondent would join the call but she did not do so.
6. After introductions and introductory remarks by the Legal Member, Mr Curley confirmed that an order for payment of rent arrears in the sum of £3,617.33 was still being sought. The Legal Member noted that the Respondent had indicated in her Time to Pay Application that she admitted the debt but still asked Mr Curley some questions regarding the background. He confirmed that the parties were previously on quite friendly terms but that this changed when the rent account fell into arrears. The Respondent told him that she was having financial difficulties and was applying for Housing Benefit, although he thinks she has quite a senior role in a local authority and had deliberately reduced her working hours. He had also found out that the Respondent had been on two foreign holidays during the time she was accruing rent arrears and also owns a caravan which she lets out for additional income which she has not declared in the paperwork she has sent into the Tribunal. Mr Curley understands that the Respondent now lives with her daughter and her family, having moved out of the Property in January 2024 without giving notice. She had just left the keys inside the Property and had left the Property in a bad state. The Applicant had discovered that the Property was empty on 8 January 2024. The Applicant had just lodged an eviction application with the Tribunal which was then withdrawn as it was no longer necessary. The Applicant applied for the tenancy deposit of £550 back. On the advice of the tenancy deposit scheme, £1 was applied to the rent arrears, bringing the balance due down to the figure claimed of £3617.33, with the remainder of the deposit being put towards the costs of putting the Property back in order. Mr Curley confirmed that the Respondent had also tried to leave outstanding gas and electricity bills to be paid by the Applicant and confirmed that the actions of the Respondent have caused a lot of hurt and upset to the Applicant.
7. Mr Curley referred to the time to pay application and the detailed response he lodged to this. Apart from the matters detailed above, Mr Curley calculates that

it would take around 14 years for the debt to be paid off at the rate offered by the Respondent of £10 per fortnight which he does not consider reasonable at all. He explained that he had tried various payment arrangements with the Respondent in the past, including accepting two-weekly rather than monthly payments at the Respondent's request, but she did not stick to these arrangements. Mr Curley requested that the Tribunal refuse the Time to Pay Application and make an order today in respect of the full sum owing.

Findings in Fact

1. The Applicant was the owner and landlord of the Property.
2. The Respondent was the tenant of the Property by virtue of a Private Residential Tenancy commencing on 1 March 2019.
3. The rent in terms of the tenancy was originally £550 per calendar month, which was increased to £583 per calendar month from 1 September 2023, through the Scottish Government Rent Officer process.
4. Rental payments were erratic throughout the tenancy, although earlier arrears were subsequently made up and the rent arrears cleared.
5. From in or around July 2023, rent arrears accrued steadily and amounted to £3,618.33 at the end of the tenancy.
6. The Respondent vacated the Property, without giving notice, in or around January 2024.
7. The Applicant became aware that the Property was empty on 8 January 2024.
8. The Applicant recovered the tenancy deposit of £550, £1 of which was applied to the rent arrears, reducing the amount outstanding to £3,617.33.
9. The sum of £3,617.33 remains due and resting owing by the Respondent to the Applicant.
10. The Respondent admits the claim in terms of her Time to Pay Application submitted to the Tribunal.
11. The Respondent offered to pay the amount outstanding at the rate of £10 per fortnight in terms of the Time to Pay Application which was not accepted by the Applicant.
12. The Respondent did not attend the CMD.

Reasons for Decision

1. The Respondent did not attend the CMD, having been properly and timeously notified of same. It was noted, however, that the Respondent did not dispute the Applicant's claim. The Legal Member was therefore satisfied that the application did not require to be continued to an Evidential Hearing.
2. The Legal Member was further satisfied from the information contained in the application and supporting documentation, together with the oral submissions made by the Applicant at the CMD that the balance of the sum claimed in unpaid rent in respect the tenancy of £3,617.13 is due and resting owing by the Respondent and that an order for payment in that sum could properly be made at the CMD.
3. Having considered the information contained in the Time to Pay Application submitted by the Respondent and the Response Form, together with the oral submissions made by the Applicant at the CMD, the Legal Member was not satisfied that it would be reasonable in all of the circumstances to make a Time to Pay Direction in terms of the Debtors (Scotland) Act 1987, as amended, allowing the Respondent to pay the amount due by instalments of £10 per fortnight. Accordingly, the Legal Member refused the Time to Pay application. In doing so, the Legal Member had regard to the factors listed in Section 1A of the 1987 Act. The Legal Member took into account the information the Respondent had provided regarding her current financial circumstances but considered that this was outweighed by the fact that it would take around 14 years for the debt to be cleared at the rate offered, and by the background information provided by the Applicant regarding the history of the rent arrears and previous payment arrangements which had not been adhered to by the Respondent.

Decision

4. The Legal Member accordingly determined that the Respondent's time to pay application be refused and that an order for payment by the Respondent of the sum of £3,617.33 be made in favour of the Applicant.

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: **N. Weir**

Date: 16 July 2024