



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 (1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/23/4247

Re: Property at 11/5 Ramsay Gardens, Edinburgh, EH1 2NA (“the Property”)

Parties:

Bazlut Corporation, 11 Ramsay Garden, Castlehill, Edinburgh (“the Applicant”)

Gilson Gray LLP, Solicitors, 29 Rutland Square, Edinburgh, EH1 2BW (“the Applicant’s Representative”)

Samantha Van Kempen, 56-2 Murrayfield Avenue, Edinburgh, EH12 6AY (“the Respondent”)

Tribunal Members:

Martin McAllister (Legal Member) and Eileen Shand (Ordinary Member) (“the tribunal”)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order of payment be made requiring the Respondent to pay the sum of THIRTY THOUSAND POUNDS (£30,000) to the Applicant together with interest at the rate of 3% on the said sum calculated from 16 July 2024 until paid.

Background

1. This is an application made by the Applicant under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”), seeking an order of payment in respect of rent arrears.

Case Management Discussion

2. A case management discussion was held on 11 April 2024 and a Direction under Rule 16 of the Rules was made.

3. The Direction required the Applicant to provide a full rent statement, a written summary of the tenancy and any correspondence between the parties about rent arrears.
4. The Direction required the Respondent to provide a calculation showing what she considered she was due in respect of rent arrears and a written summary of the history of the tenancy including the reason for her being decanted to a different property.
5. Subsequent to the case management discussion, the Applicant submitted a rent statement, a summary of the history of the tenancy and a number of copies of communications between the parties.
6. The Respondent did not respond to the Direction.
7. Determination of the application was continued from the case management discussion to 16 July 2024.
8. The Applicant had submitted an application seeking an eviction order (FTS/HPC/EV/23/4646) and this was dealt with at the case management discussion on 11 April 2024.
9. Parties were advised that the application for eviction would be continued to a case management discussion on another date, subsequently arranged to be 16 July 2024.
10. Parties were advised that the application for a payment order would be continued to a hearing to be held on another date, subsequently arranged to be 16 July 2024.

Case Management Discussion and Hearing

11. The arranged case management discussion and hearing was conducted by teleconference on 16 July 2024. Mr Scott Runciman, Solicitor represented the Applicant and the Respondent was present.

Preliminary Matters

12. The Legal Member apologised to the parties because of an administrative error which had been made with regard to scheduling. There had been confusion because one of the applications had been continued to a case management discussion and the other had been continued to a hearing. The issue was that insufficient time had been allowed for a hearing. There was a discussion and parties considered that it would be useful to make use of the time to deal with any issues which could be resolved and therefore to hold another case management discussion.

Applicant's Motion to amend the sum claimed

13. Mr Runciman referred the tribunal to the rent statement which he had lodged and which showed the amount of rent arrears to be £47930. He asked the tribunal to allow the sum claimed to be amended to £47930 in terms of Rule 14A of the Rules.
14. Ms Van Kempen said that she had received a copy of the updated rent statement together with copies of the other documents submitted by the Applicant. She said that, whilst not accepting that she owed the sum of £47930, she had no objection to the sum claimed being amended to that figure.
15. **The tribunal determined that the order of payment being sought by the Applicant is for the sum of £49730.**

Case Management Discussion

16. The Respondent said that she accepted that she was due to pay something in respect of rent arrears. She said that she had not understood that she had to respond to the Tribunal in relation to the Direction but that she had sent things to the Applicant's Representative.
17. Ms Van Kempen said that, following an issue of water ingress on 25 October 2022, she had been required to leave the Property and that the Applicant had housed her in a property at 14/7 Ramsay Gardens which was owned by it.
18. Ms Van Kempen said that there had been issues with the property to which she had been decanted. She said that she had been told in December 2023 that the Property was ready for her to reoccupy and she said that she would not accept responsibility for rent from December 2023 because it was uninhabitable and not able to be lived in. She said that she had obtained a lease for another property.
19. Ms Van Kempen agreed that the figure of rent from December 2023 to June 2024 equated to £14000 and that this was the figure that she would seek to have deducted from the sum of £47930.
20. Ms Van Kempen said that, because of the issues with the property to which she had been decanted, she considered it reasonable for there to be a further deduction from the sum being sought.
21. Ms Van Kempen said that she was selling a property in Edinburgh and would be able to pay the sum of £10000 in September 2024 as a significant instalment to reduce the sum due.
22. There was a discussion between the parties and Mr Runciman said that he would be prepared to take instructions from his client to determine if it would accept the sum of £30000. He said that the tenancy agreement allowed for

interest to be applied at the rate of 8% to any outstanding sums of rent and that he anticipated that his client would be looking for any order to include interest.

23. After an adjournment, Mr Runciman advised the tribunal that his client would accept a payment order of £30000 with interest at the rate of 3% rather than 8%. He said that he would seek the interest to be applied from 16 July 2024.
24. The Respondent said that she was prepared to pay the sum of £30000 with interest at 3%. The Legal Member asked her to think carefully about matters and whether she understood the consequences. The Respondent confirmed her position.
25. The Respondent said that she could pay the sum of £10000 within a few months when she received the proceeds from the sale of her property. She said that thereafter she could pay instalments of £1000 per month and would be seeking a time to pay order. It was explained to the Respondent that application for a time to pay direction could be made to the Tribunal when responding to the application for payment and that it is appropriate where a respondent is accepting the sum claimed as being owed. In this case, the Respondent was not accepting that the sum of £47930 is due. It was explained that a time to pay order could be applied for if a charge was served on her after an order had been granted and she had not made payment.
26. The Respondent said that serving of a charge could affect her employment which could mean that she had no funds to make any payment. The Respondent said that she would prefer no order to be made and that she be given time to pay. She said that the granting of an order could affect her employment position.
27. Mr Runciman said that he would be seeking an open order of payment. He said that attempts had been made in the past to have the Respondent engage with payment plans and that these had been unsuccessful. He said that his clients required the comfort of an order albeit they would be prepared, once it had been granted, to enter into discussions with the Respondent with regard to payment arrangements.

Discussion and Determination

28. The tribunal considered whether it could determine the application in terms of Rule 17 (4) or continue the matter to a hearing. Neither party indicated that there was evidence which required to be led and tested. The Respondent had accepted that she owes the sum of £30000 which is significantly less than the sum of £47930 which was being claimed.
29. The tribunal considered whether the matter could be continued without an order. The proposal of payment which has been made by the Respondent: a lump sum of £10000 in a few months and monthly instalments of £1000 would take more than eighteen months to be completed. This did not seem reasonable

given that, for that period, the Applicant would be at risk and without the comfort of an order from the Tribunal.

30. The tribunal noted that the Respondent had concerns about her employment position should an order be granted. The arrears are significant and long standing and pre-date the issue with the property in October 2022. It was also noted that the last payment of rent was in July 2023. The documents lodged as productions by the Applicant demonstrate that there had been unsuccessful attempts to have the Applicant enter into a payment plan.

31. The Respondent must have been aware of any danger to her employment long before the matter was brought to the Tribunal. If such danger exists, it has been within the Respondent's power to address the issue of arrears and their level with the Applicant.

32. On balance, the tribunal saw no reason not to grant the payment order for £30000 with interest on the sum outstanding at the rate of 3%

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.

Martin Mcallister

**Martin J. McAllister
Legal Member
16 July 2024**