



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/24/2028

Re: Property at 9 Bankhead Terrace, Forfar, DD8 3JG (“the Property”)

Parties:

Ms Amanda Carle, Eastmost Cottage, Old Huntlyhill, Brechin, DD9 7PU (“the Applicant”)

Miss Amy Martin and Ryan Carroll, 1 Kilnbank Lane, Kirriemuir, DD8 4JF; 1 Kilnbank Lane, Kirriemuir, DD8 4JF (“the Respondents”)

Tribunal Members:

Shirley Evans (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment against the Respondents in favour of the Applicant in the sum of FOUR THOUSAND FOUR HUNDRED AND NINETY POUNDS (£4490) STERLING. The order for payment will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondents.

Background

1. This is an action for former rent arrears raised in terms of Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
2. The application was accompanied by a Private Residential Tenancy Agreement between the parties dated 1 May 2022, an email dated 4 April 2023 from the Applicant to the Respondents with a rent statement and a rent statement to 5 April 2024.

3. On 30 June 2024 the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 19 September 2024 the Tribunal enclosed a copy of the application and invited the Respondents to make written representations to the application by 10 October 2024. The Tribunal advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 23 October 2024.
5. On 26 September 2024 the Respondents lodged separate Applications for a Time to Pay Direction ahead of the CMD offering to pay £40 per month towards the arrears.
6. On 14 October 2024 the Applicant’s solicitor lodged an objection to the Respondents’ applications on the basis the Applicant had given the Respondents previous opportunities to clear the arrears by way of instalments, none of which had been kept by the Respondents and that it would take over 4.5 years to recover sums that had been outstanding for over two years. This was accompanied by emails between the Applicant and the Respondents dated 12 and 15 December 2022, 3 February, 4 and 17 April and 16 May 2023 and emails between the Applicant’s solicitor and the Respondents dated 9 January, 28 February and 9 April 2024.

Case Management Discussion

7. The CMD was held on 23 October 2024. The Applicant was represented by Ms Hussey, solicitor from Friends Legal. Both Respondents also appeared with Mr Carroll speaking on behalf of them both.
8. The Tribunal had before it the Private Residential Tenancy Agreement between the parties dated 1 May 2022, the email dated 4 April 2023 from the Applicant to the Respondents, the rent statement to 5 April 2024, emails between the Applicant and the Respondents dated 12 and 15 December 2022, 3 February, 4 and 17 April and 16 May 2023, emails between the Applicant’s solicitor and the Respondents dated 9 January, 28 February and 9 April 2024 and the Respondents’ applications dated 26 September 2024. The Tribunal considered these documents.
9. The Tribunal confirmed with Mr Carroll that the arrears were not disputed and confirmed it had received the Respondents’ Applications for Time to Pay Directions. On going through, these Mr Carroll clarified that although each application had offered to clear the arrears by £40 per month, this was a joint figure but if it helped, they could pay £40 each. On going through the Applications, the Tribunal noted that Mr Carroll’s outgoings exceeded his

salary by about £10 per month and that Ms Martin had approximately £50 spare every month. Mr Carroll advised that since he had lodged the Application his salary was less as he had changed job. They were trying to find some spare money, He explained Ms Martin was on statutory maternity leave with a 8 month old baby. They have also just found out that they are expecting another baby. He is currently employed as a depot supervisor.

10. Ms Hussey advised that the Applicant objected to the Respondents' time to pay applications. She submitted that the Applicant had tried on numerous times to enter into repayment agreements with the Respondents and referred to the various emails lodged outlining the previous agreements. In particular, she referred to an email dated 9 April 2024 from Ms Martin which stated the payment of the arrears was not a priority. In her submission the Respondents had no intention to make any payments towards the arrears. The Tribunal noted the rent statement showed arrears of £4490 with £50 being paid on 5 April 2024 since the end of the tenancy on 16 May 2023 when arrears stood at £4540.

Reasons for Decision

11. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the submissions made by Ms Hussey and Mr Carroll.
12. The Tribunal noted that parties were in agreement with regard to the material facts, namely amount of the arrears. The Applicant had produced evidence of non-payment of rent with reference to the rent statement and emails lodged. The Respondents admitted the arrears and lodged Applications for a Time to Pay Direction to pay £40 per month. The Tribunal noted that on the current level of arrears, the arrears would take over 4.5 years to clear. The Tribunal was concerned that the Respondents were already stretched financially and was not satisfied that they would be able to maintain payments of £40 every month. Their personal circumstances had changed since the applications had been made with Mr Carroll being on a lesser salary. The Tribunal noted that the Applicant had made various repayment arrangements with the Respondents, which had failed. The Tribunal was not satisfied that it was reasonable in terms of Section 1 of the Debtors (Scotland) Act 1987 to grant the applications for the Time to Pay Directions and accordingly refused the same.

Decision

13. The Tribunal granted an order for payment of £4490.

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.

Shirley Evans

23 October 2024

Legal Member

Date