



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/24/3005

Re: Property at 7F Queen Elizabeth Gardens, Clydebank, G81 3BX (“the Property”)

Parties:

James Calder, 52 Duntocher Road, Clydebank, G81 3LN (“the Applicant”)

Mr Izunna Jackson, 7F Queen Elizabeth Gardens, Clydebank, G81 3BX (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment in the sum of Five thousand nine hundred and twenty five pounds and sixty pence (£5925.60) Sterling

Background

1. By application to the Tribunal dated 2 July 2024 the Applicant sought an eviction order against the Respondent in respect of the Property under Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”) and section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant relied upon ground 12 of Schedule 3 of the 2016 Act. In support of the application the Applicant provided the following documentation:-
 - (i) Private residential tenancy agreement between the parties dated 21 June 2019;
 - (ii) Notice to Leave dated 3 May 2024 stating that proceedings will not be raised any earlier than 3 June 2024 together with proof of delivery by email;

- (iii) Section 11 notice to West Dunbartonshire Council together with proof of sending by email;
 - (iv) Rent Statement; and
 - (v) Emails from Clyde Property to the Respondent in compliance with the rent arrears pre-action protocol.
2. By Notice of Acceptance of Application a Legal Member of the Tribunal with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. The application was therefore referred to a Case Management Discussion (“CMD”) on 4 December 2024, to take place by teleconference. Notification was sent to the parties in accordance with Rule 17(2) of the Rules of Procedure.
 3. Said notification together with a copy of the application paperwork was served upon the Respondent by Sheriff Officers on 25 October 2024.
 4. Both parties were invited to make written representations in advance of the CMD. On 13 November 2024 the Respondent submitted a time to pay application which was intimated to the Applicant. On 20 November 2024 the Tribunal received a response from the Applicant objecting to the time to pay application. The Applicant also submitted a request to increase the sum sought which was accompanied by a rent statement.

Case Management Discussion

5. The CMD took place on 4 December 2024 by teleconference. The Applicant was represented by Ms Alexandra Wooley of Bannatyne Kirkwood France and Co. The Respondent did not attend. The Tribunal noted that he had received notification of the CMD in accordance with Rule 17(2) of the Rules and had been given the opportunity to submit written representations and participate in the CMD. He had submitted a time to pay application therefore the Tribunal was content that he was aware of the proceedings. The Tribunal therefore determined to proceed with the CMD in his absence.
6. The Tribunal asked Miss Wooley for her submissions on the application. For the avoidance of doubt the following is a summary of what was discussed and does not constitute a verbatim account of the CMD.
7. Miss Wooley confirmed that the Applicant sought a payment order in the increased sum of £5925.60. She had hoped that the Respondent would be present to clarify some points regarding his time to pay application, such as whether the increased arrears would impact his offer, and why he couldn't offer a higher amount when it appeared that he had disposable income of £1800 per month. The Applicant had been impacted financially by the arrears. He had a mortgage over the property of approximately £45000 that he required to pay, along with the other property costs such as repairs and factoring. Given the lack of clarity on these matters the Applicant wished to object to the time to pay application.

8. Miss Wooley confirmed that the Applicant also sought interest at the rate of 4.75% per annum, reflecting the current base rate. The tenancy agreement did not make provision for a contractual interest rate therefore it would be at the Tribunal's discretion. Miss Wooley submitted interest at 4.75% per annum would be reasonable in view of the level of arrears and the length of time they had been outstanding, which was approximately three years.
9. The Tribunal adjourned to deliberate, during which time Miss Wooley left the call, before resuming the CMD and confirming its decision.

Findings in Fact

10. The Applicant let the property to the Respondent under a tenancy agreement which commenced on 21 June 2019.
11. In terms of Clause 8 of the said tenancy agreement the Respondent undertook to make payment of rent at the rate of £595 per calendar month.
12. The rent was subsequently increased following the service of a rent increase notice upon the Respondent by the Applicant to £612.85 per month from 21 July 2023.
13. As at the date of this decision arrears in the sum of £5925.60 are outstanding.
14. Despite repeated requests the Respondent has refused or delayed in making payment of the sum due.

Reasons for Decision

15. The Tribunal determined that it had sufficient information upon which to make a decision at the CMD and that to do so would not be prejudicial to the parties. The Respondent had submitted a time to pay application, accepting liability for the debt. Accordingly the Tribunal did not identify any facts in dispute, nor any issues to be resolved, that would require a hearing to be fixed. The Tribunal was satisfied that it could make relevant findings in fact based on the information provided by the Applicant.
16. The Applicant had requested an increase of the sum claimed. The Tribunal was satisfied that the request had been made timeously under Rule 14A of the Rules and had been intimated to the Respondent. On that basis the Tribunal was content that the sum could be amended to £5925.60 which reflected the balance of arrears outstanding as at the date of the CMD.
17. The Tribunal considered the Respondent's time to pay application. Whilst the Respondent was offering payments of £612.42 per month, the Tribunal was unclear as to why he had chosen that amount, which was not far off the rent for the property. The Tribunal was also not satisfied that the offer reflected the maximum that the Respondent could afford, based on the information regarding

his disposable income of £1800 per month. It was clear that the arrears were having a significant financial impact on the Applicant and the Tribunal was not persuaded that the offer from the Respondent reflected the most he could afford. The Respondent had not attended the CMD therefore the Tribunal had been unable to question him on this point. Accordingly based on this lack of clarity the Tribunal determined that it could not make a time to pay direction at this time as it would not be reasonable to do so, having regard to the nature of the debt, the Respondent's financial position and the ongoing impact of the arrears on the Applicant.

18. The Tribunal therefore made an order for payment in the sum of £5925.60 with interest at the rate of 4.75% from the date of this decision until payment, which the Tribunal considered was reasonable in the particular circumstances of this case.
19. The decision of the Tribunal was unanimous.

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.

Ruth O'Hare

4 December 2024

Legal Member/Chair

Date