



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014**

**Chamber Ref: FTS/HPC/CV/21/0356**

**Re: Property at 8 Ivy Grove, Coatbridge, ML5 3PS (“the Property”)**

**Parties:**

**Ecosse Estates Limited, 1st Floor, Elizabeth House, 13 - 19 Queen Street, Leeds, West Yorkshire, LS1 2TW (“the Applicant”)**

**Ms Karen Ward, 8 Ivy Grove, Coatbridge, ML5 3PS (“the Respondent”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member) and David MacIver (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“ the Tribunal”) determined that a payment order in the sum of £4000 be made in favour of the Applicant and against the Respondent.**

The decision of the Tribunal was unanimous.

**Background**

1. By application dated 17 February 2021, the Applicant’s solicitor applied to the First-Tier Tribunal for Scotland (Housing and Property Chamber) for a payment order in respect of rent arrears said to be due at the property at 8 Ivy Grove, Coatbridge, ML5 3PS in terms of Rule 70 of the First-Tier Tribunal rules of procedure. A related application for a possession order at the property was also lodged with the Tribunal and this application has reference number FTS/HPC/EV/21/0355.
2. Both the application for a payment order and the application for the possession order were accepted by the Tribunal on 3 March 2021. The Applications were conjoined to be dealt with together.
3. A case management discussion was fixed for 13 April 2021 at 10 am for both applications. At this case management discussion on 13 April 2021 a detailed

discussion took place. At that stage the Respondent set out her position regarding the rent arrears. She indicated there had been a number of repair issues at the property for which she had required to spend her own money to fix or attempt to fix the problems. Her position was that these repairs should have been effected by the Applicant. She also indicated that some repair issues remained unresolved at the property although she had waited for a number of years for these to be resolved. She also indicated that her health and employment situation had affected her ability to pay the rent at the property. It was her position that these matters had to be considered or set against against any rent that was said to be due by her.

4. There was no dispute between parties that they had entered into two tenancy agreements at the property, the first of which commenced on 11<sup>th</sup> November 2014 and had continued until the subsequent agreement which commenced on 1<sup>st</sup> May 2017. The rent payable in terms of both tenancies was £550 payable monthly in advance. Around May 2020 the rent was reduced to £500 per month to assist the Respondent.
5. The Tribunal fixed a Hearing in relation to both applications to take place on 26<sup>th</sup> May at 10 am and issued a Note of Direction to the parties in relation to the application for a possession order after the case management discussion.
6. The Tribunal was asked to postpone the Hearing on 26<sup>th</sup> of May in order that parties could negotiate a possible settlement of the issues. The Tribunal allowed the Hearing to be postponed to allow settlement negotiations between the parties to take place. A new Hearing was fixed for 2 July 2021. Settlement between the parties was not effected and a request to adjourn the Hearing fixed for 2 July to a later date was requested as the Applicant's legal representative was not available on 2<sup>nd</sup> July. This request to adjourn was granted by the Tribunal. A new hearing was fixed for 30 July 2021 10 am in respect of both applications.

## **The Hearing**

7. The Hearing on 30 July 2021 was attended by Miss Donnelly, solicitor for the Applicant, Mr Brian Caplan, a director of the Applicant company and Ms Karen Ward, the Respondent who represented herself.  
The Tribunal legal member and chair explained to the parties what would happen at the Hearing and went through all the paperwork which the Tribunal had in order to check that all parties had the appropriate papers. The Tribunal had sight of six inventories of productions lodged on behalf of the Applicant relating to both applications.
8. In respect of the payment order application the Tribunal had sight of the application, a tenancy agreement from 2017, a rent statement, a tenancy agreement from 2014, a rent statement from 2014, a rent statement from 2017, a settlement letter with rent statement attached, an email from the Respondent provisionally agreeing to settlement, invoices from Gas Select dated between 2014 and 2020, a gas safety certificate dated December 2020, copy invoices for works between 2016 and 2021, a builder's report regarding windows and doors, extract text message correspondence between the Applicant and Respondent, a rent statement as at 14 July 2021, e mail correspondence from 'The Window Mender' regarding access to the property dated 21 July 2021, e mail correspondence between Applicant and Respondent regarding access

dated between 20 and 22 July 2021, a copy text message from the Respondent to the Applicant on 21 July 2021 and email correspondence from Wellwood Joinery regarding the back door at the property together with a copy invoice.

9. The Applicant's representative Miss Donnelly confirmed that these were the appropriate documents lodged on behalf of the Applicant. The Respondent Ms Ward confirmed that she had seen all of these documents except for the email and invoice from Wellwood Joinery. The Tribunal Clerk forwarded this missing information from inventory of productions number 5 for the Applicant to the Respondent by e mail.
10. In relation to the Respondent's position the Tribunal had sight of a series of emails between 19<sup>th</sup> April and 21 July 2021. Ms Donnelly for the Applicant had not had sight of these emails but had sight of emails from the Respondent dated 12<sup>th</sup> April and 24<sup>th</sup> of March. The Tribunal indicated that enquiries would be made to trace these emails and to forward to miss Donnelly the e mails she had not seen before the Hearing started.
11. The Tribunal raised a number of preliminary issues with the Applicant's representative Ms Donnelly.
12. These related to the question of rent arrears said to be brought forward from the tenancy agreement which had commenced in 2014. The Tribunal raised the question of whether these arrears had arisen more than five years before the tribunal applications had been lodged and whether this part of the payment order claim might be time-barred. Miss Donnelly indicated that she would have to check that point. The Tribunal also raised the issue of the lodging of a letter proposing settlement terms from the Applicant's representative's firm and the response from the Respondent to that letter. Miss Donnelly confirmed that these documents were lodged simply to indicate that an attempt had been made to resolve matters. The Respondent Ms Ward had no objection to her response to the settlement offer being considered by the Tribunal.
13. Both parties indicated that they were prepared to have a discussion in relation to both applications to see if an agreement could be reached. The Hearing was formally adjourned and both Tribunal members left the audio teleconference call in order that a discussion could take place. The Tribunal clerk remained on the call.
14. When the hearing reconvened Miss Donnelly, the Applicant's representative confirmed that an agreement had been reached between the parties. She indicated that it was now agreed that the sum of £4000 was outstanding in respect of rent arrears at the property accrued over the period of the tenancy agreement which commenced on 1 May 2017.
15. Miss Donnelly indicated that parties had agreed that a payment order in the sum of £4000 be granted in favour of the Applicant and against the Respondent. Parties had agreed that the arrears would be paid by the Respondent at the rate of £150 per month to start when she vacated the property. She said that parties had agreed that Ms Ward would continue to pay monthly rent at the property of £500 per month until she vacated the property. There was no request for a time to pay direction in relation to the payment order.
16. The Tribunal legal member and chair went through the details of the proposed agreement with the Respondent who confirmed that she understood and was

in agreement on the facts as set out by Miss Donnelly and agreed that she consented to the Tribunal making orders in the terms set out.

17. The Respondent Ms Ward accepted all the factual information put forward by the Applicant's representative and confirmed she felt it was appropriate for a payment order in the sum of £ 4000 to be made in respect of rent arrears due at the property.
18. The Respondent had accepted during the discussion which had taken place on the morning of the Hearing on 30<sup>th</sup> July that she had built up rent arrears due to issues around employment and health. She was in agreement with all submissions made by the Applicant's representative in support of the request for a payment order.

### **Findings in Fact**

19. The parties first entered to a tenancy agreement at the property with effect from 11th November 2014 with monthly rent payable of the rate of £550.
20. The parties entered into a subsequent assured tenancy agreement at the property from 1<sup>st</sup> May 2017 with monthly rent payable at £550 per month.
21. This tenancy agreement continued on a rolling monthly basis at the end of its six-month term on 1 November 2017 and continues.
22. Over the period of the tenancy agreement commencing 1 May 2017 rent arrears at the property started to accrue.
23. In May 2020 the monthly rent was reduced to £500 per month in an effort to assist the Respondent with ongoing difficulties in paying the rent and the build-up of rent arrears.
24. Arrears of rent continued to accrue in terms of the tenancy agreement at the property.
25. The Applicant's solicitor attempted to seek payment of the rent arrears by the Respondent .
26. The sum of £4000 is lawfully due to the Applicant by the Respondent in relation to rent arrears accrued at the property in terms of the tenancy agreement between the parties dated 1st May 2017.

### **Reasons for Decision**

27. The Tribunal was satisfied that it was appropriate to grant a payment order in respect of rent arrears due to the Applicant by the Respondent in terms of the tenancy agreement dated 1<sup>st</sup> May 2017. It did not require to consider whether arrears said to be due in terms of the first tenancy agreement were lawfully due as a sum in arrears was agreed in respect of the 2017 tenancy agreement.

## **Decision**

The Tribunal granted a payment order in the sum of £4000 in favour of the Applicant and against the Respondent.

## **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.**

Valerie Bremner

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**Legal Member/Chair**

30.7.21

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**Date**