

Housing and Property Chamber
First-tier Tribunal for Scotland



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/19/1240

Re: Property at 26 Byron Street, Dundee, DD3 6QX (“the Property”)

Parties:

Ms Neena Saggar, Westridge House, Badgers Hill, Atch Lench, Evesham, WR11 4SD (“the Applicant”)

Mr Marek Kirszniewski, Ms Elizabeth Kirszniewski, G/2 36 Craigard Road, Dundee, DD2 4RP (“the Respondents”)

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be granted in favour of the Applicant. A time to pay direction was made allowing the Respondents to make payment of the principal sum of £1,374.79 by instalments in the sum of £100 per month.

Procedural Background:

The Applicant is seeking an order for payment of rent arrears for the property. An application in terms of Rule 70 (Civil Proceedings) was lodged on 23 April 2019 and the sum outstanding stated as £1,600 rent arrears, based on a monthly rent of £600 for a Short Assured Tenancy which commenced on 15 September 2015 to the end of the tenancy on 14 May 2019.

The Applicant lodged the Short Assured Tenancy Agreement dated 15 September 2015, AT5 document, Lease Extension document 14 March 2018, S 33 notice dated 13 February 2019, Notice to Quit dated 13 February 2019 and S 11 Notice.

The Tribunal first fixed a Case Management Discussion for 23 August 2019.

The Case Management Discussion:

In attendance at the Case Management Discussion (CMD) were Mr Hutchison for the Applicant, Ms Bulle from Shelter for the Respondents, the Respondents and their son Marius Kriszniewski as supporter. Both parties had been advised in the documentations sent by the First tier Tribunal that a decision can be made at the CMD.

On 13 August 2019 Shelter had lodged a financial statement and an authorisation letter from the Respondents. They had proposed a payment regime at the rate of £100 per month for the sum sued for.

At the CMD the Applicant provided a copy of an Arrears Statement and Agreement dated 3 June 2019 between the Respondents and Balgay Property & Investment Services on behalf of the Applicant showing the calculation of the final outstanding amount of £1,374.79 and an agreed payment rate of said sum of £300 per month for four months followed by a one off payment of £174.79 commencing on 1 July 2019 and a cover letter advising the Applicant of said arrangement dated 17 July 2019. The Tribunal allowed the unopposed amendment of the application to the sum of £1,374.79.

The Respondents confirmed that arrears are stated correctly in that agreement and that they now propose payments at the rate of £100 per month in view of their financial situation. They also stated that they would like to set up a direct debit for these payments for payments at the 1st day of each month. Ms Bulle stated that the Respondents were seeking a Time to Pay Direction in these terms and were aware of the consequences.

The Applicant's representative consented to the application for a Time to Pay Direction although this was at a much lower rate as the previously agreed repayment plan.

The documents lodged are referred to for their terms.

Findings in Fact:

- 1. The Applicants and the Respondents entered into a Short Assured Tenancy on 15 September 2015.**
- 2. The Respondents handed back the keys to the property on 3 June 2019**
- 3. In terms of the Tenancy Agreement rent of £600 is due per month.**
- 4. The amount of arrears as at the end of the tenancy was £1,374.79 as shown in the Arrears Statement and Agreement document dated 3 June 2019.**
- 5. The deposit of £600 was released to the Applicant and applied towards the arrears, leaving said sum of £1,374.79 outstanding.**
- 6. The parties are agree that this should be paid in instalments of £100 per month.**
- 7. At this rate payment of the full sum will take less than 2 years.**

Reasons for the Decision:

The Tribunal make the decision on the basis of the written evidence lodged by both parties and the evidence of the parties at the CMD. The facts in the case are not disputed.

The rent outstanding as of the date of the CMD based on the amounts paid as per the schedule lodged and the rent charge of £600 per calendar month and the deposit release is £1,374.79. There was no defence to the action. It is not in dispute that the sum of £1,374.79 rent arrears is due by the Respondents to the Applicant.

The Respondents at the CMD requested time to pay the arrears at the rate of £100 per month, which was agreed by the Applicant.

The Applicant is entitled to payment of the sum of £1,374.79.

The Tribunal grants the order as rent lawfully due to the Applicant by the Respondent had not been paid.

The Tribunal was satisfied that it was reasonable in all the circumstances to grant a Time to Pay Direction, having regard to the nature and reason of the debt, the action taken by the Applicant to assist the Respondent in paying the debt, the Respondent's financial position, the reasonableness of the Respondents' proposal and the Applicant's agreement to the proposal.

From the information on the application for time to pay direction the Tribunal is satisfied that the payment rate proposed is realistic and the debt would be cleared within less than 2 years.

Decision

The Tribunal grants an order against the Respondents for payment of the sum of £1,374.79 to the Applicant. The Tribunal also makes a time to pay direction allowing payment to be made by instalments of £100 per month.

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.

Petra Hennig-Mcfatridge

Legal Member/Chair

23.8.19

Date