

**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/21/1522

**Re: Property at Newington South Cottage, Holywood, Dumfries, DG2 0RA (“the
Property”)**

Parties:

The Cowhill Trust, 28 Castle Street, Dumfries, DG1 1DG (“the Applicant”)

**Mr David Glendinning, Newington South Cottage, Holywood, Dumfries, DG2
0RA (“the Respondent”)**

Tribunal Member:

Melanie Barbour (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that it would grant an order for payment of EIGHT
THOUSAND NINE HUNDRED and SEVENTY ONE POUNDS NINETY FIVE
PENCE (£8,971.95) STERLING.**

Background

1. An application was received under rule 70 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for payment by the Applicants against the Respondent..
2. The application contained:-

- a. a copy of the tenancy agreement
 - b. AT5 Notice
 - c. section 33 notice
 - d. notice to quit
 - e. recorded delivery slip
 - f. section 11 notice and evidence of service
 - g. a copy of the Respondent's rent statement
3. The Applicants' representative Mr Turnbull from Messrs Gillespie, Gifford and Brown LLP appeared on behalf of the Applicant. There was no attendance by the respondent or his wife, who had previously appeared as the respondent's representative.
4. This case had previously called 23 August 2021 and reference is made to the case management discussion note. The case had been continued on that date for the following matters to be addressed:
- a. For the respondent to make 3 payments to rent (August, September and October)
 - b. For the respondent to make 3 payments towards the arrears.
 - c. For the respondent to contact Dumfries and Galloway Council Homeless team and take advice and support offered by them
 - d. For the respondent to seek advice from a council officer or other suitably qualified professional to obtain a benefits assessment and ensure that their income is maximised
 - e. For the respondents to complete a time to pay application and to provide a copy of it to the tribunal and to the applicant's agent with the repayment offer confirmed in it
 - f. For the applicant's agent to seek instructions on the offer to repay the arrears once the offer is provided to him from Mrs Glendinning.
5. The parties had been informed of the date of this case management discussion. The time of the case management discussion had been altered

from 10 until 11 am on 17 December 2021. The parties had been notified of this change by email on 17 December 2021. The tribunal clerk had however opened the telephone line at 10am in case parties called in at the original time. No one had called in at 10am. Mr Turnbull advised the Tribunal that he had in fact spoken with Mrs Glendinning who called him at around 10.30am that morning (20 December), she had asked him what was happening with the proceedings, and he had confirmed to her that the case was calling at 11a.m. He advised that she had appeared to indicate that she had not been aware of the change in the time of the case management discussion taking place but did not say that she would not be attending at 11am. Further, while Mr Turnbull was in attendance at the case management discussion, he advised that his secretary had just taken a call from Mrs Glendinning. She had advised that she was going to a doctor's appointment and would not be taking part in the proceedings.

6. Given that the respondent and his representative did not dial into the hearing at 10am or 11am; and further had not contacted the tribunal to advise that they could not attend the hearing at 11am as the representative had had a doctor's appointment; and as this case management discussion had already been adjourned at the request of the respondent in October so that they could attend a funeral in England; the tribunal determined that it would fair, reasonable and in the interests of justice to continue with today's case management discussion.

Case Management Discussion

7. The applicant's agent advised that he was seeking a payment order today.
8. The agent confirmed that there had been a history of rent arrears by the respondent. Initially, the rent payments had been more sporadic with part payment of rent being made, however from March 2020 rent payments had stopped altogether. On 23 August 2021 the agent advised that the rent arrears

had increased from the date of the application and totalled £9,787.95. He advised that the current arrears were £10,045.95.

9. Since the first case management discussion the respondent had made three payments to the rent, albeit the December payment had not yet been made. He advised however that the offer which had been made by Mrs Glendinning to repay the arrears at £300 per month had not been adhered to. He advised that since the case called in August there had only been one payment to the arrears of £150 this had been made on 27 August 2021. There had been no other payments made.
10. He advised that the applicants had tried to engage with the respondents about the rent arrears and he had lodged three copy letters, which he had sent to the respondent about the arrears. He had not received any response from the respondent until last week, when Mrs Glendinning had contacted him. He advised that she had told him that both her and her husband were now in receipt of state pension and her husband also worked on an *ad hoc* basis. Mrs Glendinning suggested that they were able to make the payments towards the arrears. Notwithstanding this it was apparent that they had not been repaying the rent arrears as proposed.

Findings in Fact

11. The tribunal found the following facts established:-
12. That there was a tenancy agreement between the Applicant and the Respondent in respect of the property.
13. That it had commenced on 15 July 2008 until 14 July 2009. The agreement was for an initial period of 12 months, and it renewed on a monthly basis thereafter.
14. The tenancy agreement had been signed by the parties on 9 July 2008.

15. Clause 3 provided that rent was £400 per month and was payable monthly.

16. Since at least February 2017 monthly rent payments had increased to £408 per month.

17. Rent arrears outstanding were £10,045.95 as of 20 December 2021.

Reasons for Decision

18. Section 16 of the Housing (Scotland) Act 2014 provides that the First Tier Tribunal has jurisdiction in relation to civil proceedings arising from assured tenancies. As this tenancy is an assured tenancy, we are content that we have jurisdiction to deal with this case.

19. The tenancy agreement created obligations between the parties including, the obligation to pay rent. The Respondent had failed to pay her rent.

20. Based on the evidence before us, which includes:- the papers submitted namely the application and the additional information received from the applicant; the verbal submission by the applicant's agent; and the confirmation from the respondent's representative that the respondent did not dispute the rent arrears. We consider that we should make a payment order of £8,971.95.

Decision

21. The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that it would grant an order for payment of EIGHT THOUSAND NINE HUNDRED and SEVENTY ONE POUNDS NINETY FIVE PENCE (£8,971.95) STERLING.

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.

Melanie Barbour

Legal Member/Chair

29/12/2021
Date
