



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section Rule 70 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)**

**Chamber Ref: FTS/HPC/CV/20/2652**

**Re: Property at 2 Cot Castle Grove, Stonehouse, Lanarkshire, ML9 3RQ (“the Property”)**

**Parties:**

**Miss Alix Reid, c/o Countrywide Lettings, 29 Cadzow Street, Hamilton, Lanarkshire, ML3 6EE (“the Applicant”)**

**Mr Gordon McInnes, Ms Stephanie Pollock, 14 Nicholswell Place, Borland Walk, Glassford, ML10 6YR (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member) and Eileen Shand (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment to the Applicant in the sum of £1,995 should be made against the Respondent.**

**Background**

1. By application of 22 December 2020, the Applicant sought a payment order against the Respondent in the sum of £2,311 in respect of rent arrears. Supporting documentation including copy tenancy agreement between the parties, screenshots of bank statements, a breakdown of the sum claimed and email correspondence between each of the parties and the Applicant’s letting agents, Countrywide, were submitted in support of the application.
2. The application was accepted by the Tribunal by Notice of Acceptance dated 30 March 2021, in terms of Rule 9 of the Regulations, and duly served on the Respondent by Sheriff Officer. Written representations were to be made by 28

April 2021. Written representations were lodged by the Respondent on 19 April 2021. Further late written representations were lodged by the Applicant on 4 May 2021 and the Respondent on 7 May 2021. All representations were circulated to the other party in advance of the Case Management Discussion (“CMD”) and neither party objected to the late representations being allowed in. These representations were permitted by the Tribunal although technically late.

3. The CMD took place on 10 May 2021 at 11.30am with the Legal Member of the Tribunal. Both parties were in attendance. A detailed Note on the CMD prepared by the Legal Member and a Direction, both dated 10 March 2021 were issued to parties after the CMD. An Evidential Hearing was fixed at the CMD to take place on 21 June 2021 at 10am. Both Tribunal Members had had regard to the terms of both the CMD Note and the Direction prior to the Evidential Hearing.
4. In response to the Direction, neither party intimated details of any witnesses they intended to call at the Evidential Hearing. The Applicant, in response to the Direction, submitted documentation on 31 May 2021 which was circulated to the Respondent and the Tribunal Members. This mostly consisted of the original paperwork which had been submitted prior to the CMD, with a few additional documents. The Respondent did not comply either with the terms of the Direction nor with the Tribunal Regulations by submitting further written representations on 18 June 2021 which were late in terms of both the Direction and Regulations. The late representations were circulated to the Applicant and the Tribunal Members on 18 June 2021, in advance of the Evidential Hearing.

### **The Hearing**

5. The Evidential Hearing took place by telephone conference call on 21 June 2021, commencing just after 10am. The Tribunal Members introduced themselves. Both parties were again in attendance, Miss Alix Reid, the Applicant and both Respondents, Mr Gordon McInnes and Ms Stephanie Pollock.
6. The Legal Member made some introductory remarks, referred to the previous CMD and explained the purpose of today’s Evidential Hearing. Both parties confirmed that they were not intending to call any witnesses and that they had each received all the additional paperwork submitted by the other party since the CMD. The Respondent was asked for an explanation as to the late lodging of representations on 18 June 2021 and Mr McInnes explained why this had been. The Applicant confirmed she had no objection to the late lodging as such, provided she was given the opportunity to comment on these additional representations. In view of this and, particularly, that the late representations were in fairly short compass, the Tribunal decided to allow them in. The Legal Member explained the procedure which would follow and checked parties’ understanding of this. She also made reference to the CMD Note and checked with the Applicant that it was the reduced figure of £1,995 that she was seeking in respect of rent arrears, being 3 months’ rental for the period April, May and June 2020, at £665 per calendar month. This was confirmed by the Applicant.

The Legal member also checked with parties that they were in agreement that the sole issue to be determined by the Tribunal at the Evidential Hearing, as per the CMD Note, is “whether the 3 months’ rent is due to be paid by the Respondent, having regard to the contractual tenancy between the parties, or if there was a secondary agreement reached between the parties which removed the liability for that 3 months’ rent from the Respondent”. This was confirmed by parties.

7. Miss Reid gave her evidence. She stated that, at the start of the pandemic (March/April 2020), Mr McInnes had texted her and asked if they could have a chat. They had a telephone discussion about the possibility of the Applicant applying for a 3-month mortgage holiday and, in turn, giving the Respondent a rent break of 3 months as the Respondent was financially impacted by the pandemic, due to some of their income being commission based. Miss Reid was amenable to that and contacted her mortgage lender who granted this the following day. This was communicated through her letting agents, Countrywide, to the Respondent. After that, there was no further discussion between the parties direct over the period of the 3 months April, May and June but it was understood by all that the rent payments would resume in July 2020 and that this would involve increased monthly payments to reflect the mortgage and rent payments not made over the 3 month period. The Respondent resumed payments in July 2020 at the original rate of £665 per calendar month. Countrywide subsequently reported to Miss Reid that Mr McInnes seemed to have changed his position from initially saying that increased rental payments would be made, to saying that he did not know what additional amount had to be paid, to not being prepared to pay increased amounts as he did not accept that he was due to pay back the 3 months’ rent which had been deferred and could not afford to do so. Miss Reid confirmed that the parties had reached an agreement about 2 years prior that she would sell the Property to the Respondent at a price of £150,000. However, the Respondent was unable to get the finance in place over the two years and eventually she decided to put the house on the market at the end of August 2020. She had told the Respondent that they would get first refusal but they were not able to proceed so she accepted an offer for the Property during September 2020. Miss Reid confirmed that she served Notice on the Respondent and that due to the Covid restrictions, the notice period specified was 6 months, or earlier if the parties agreed. The Respondent ended up vacating at the end of December 2020. Miss Reid stated that Countrywide issued around 13 letters to the Respondent about the rent arrears, which she has lodged, but that she thinks the Respondent had just decided that, because the Property had been sold, they did not require to pay back the rent arrears for the 3 month period.
8. The Respondent was invited to ask any questions of Miss Reid. Mr McInnes asked Miss Reid what her plan had been to pay back the mortgage, to which she responded that there had been no specific conversation about this but maintained that it was always the understanding that she would have to pay more in view of the missed mortgage payments. She stated that this dispute is not, however, about her mortgage payments, it is about the agreement they had about the missed rental payments being paid back by the Respondent after the 3 month period. Miss Reid also referred to the fact that, although the

Respondent has stated that they were unable to get the mortgage finance to purchase her Property, they did end up being able to get a mortgage to buy another property, which was more expensive than her Property. Miss Reid also answered some questions from the Tribunal Members to clarify the chronology and timing of events she had referred to. In response to a question from the Ordinary Member, Miss Reid confirmed that there was nothing in writing between the parties about the plan around the Respondent purchasing the Property from the Applicant for £150,000. When asked by the Legal Member about the paperwork she had lodged and if there was any documentation that she wished specifically to refer to which she considers supports her position, Miss Reid just referred to all the email correspondence from Countrywide generally.

9. Mr McInnes then gave evidence. He confirmed they had a plan to purchase the Property from the Applicant for £150,000 and that they had asked for a break in rent payments due to the pandemic and for the Applicant similarly to apply for a mortgage break which was agreed. They recommenced their payments in July and had never previously missed any rental payments over the 4 years of the tenancy. The mortgage that they were supposed to be getting to buy the Property from Miss Reid changed from requiring a 5% deposit to requiring a 20% deposit which they could not manage. He explained that the mortgage that they did end up getting to buy the other property was through a 'help to buy' scheme. Mr McInnes maintained that he always knew that they were going to have to pay a small additional amount per month on the rent payments but that was just to cover any additional cost incurred by Miss Reid on her monthly mortgage payments once they started again. They did not think that the 3 months' rent payments had to be made up and only realised this was the Applicant's intention when they got an arrears letter from Countrywide. They received their notification to leave under section 33 and a dispute arose about the notice period required so they ended up leaving the Property later in December than they had originally intended. The £750 deposit was left to the Applicant which they considered covered everything.
10. In response to questions from the Legal Member, Mr McInnes said that he became aware towards the end of the 3 month period that they were not going to be able to proceed with the proposed purchase. He said that he did not really give much thought to the rent situation as he was then mainly focusing on the eviction notification they had received. He referred to the paperwork he had lodged and said that this shows that he had asked about the additional figure to be repaid monthly but had not ever been given this. With reference to the Countrywide arrears letters mentioned by the Applicant, Mr McInnes said that they were just weekly auto-generated letters and that there were 3 or 4 different people at Countrywide dealing with the matter. He did not think they were privy to the agreement the parties had had about them purchasing the Property from the Applicant. He said that there is nothing in the paperwork produced by the Applicant that mentions the higher mortgage payments that she was having to make or the exact figure that they were to add to their rent payments. He assumed then that the deferred mortgage payments would just be added on at the back of her mortgage. When things gathered pace and the arrears letters came in from Countrywide, Mr McInnes said he called Countrywide and queried

it as he did not agree the arrears. He did not put anything in writing to them about this. Miss Reid asked Mr McInnes if he had ever put forward a figure that he was prepared to pay as the increased monthly rent. He replied no. Miss Reid then commented on his statement that he thought the 3 months' mortgage payments would just be added on at the end of her mortgage term and reiterated that what she had agreed to was a mortgage holiday not that the 3 months' rent would be completely wiped out. She was to be paid back the 3 months' rent and this is what she is requesting. When asked by the Legal Member if she thought there had been a genuine misunderstanding between the parties when the rent break had originally been agreed, Miss Reid said no, she did not think there had been a misunderstanding. The Ordinary Member referred to the tenancy agreement in place and the expectation that this gives rise to that monthly rent would be paid. She asked the Respondent to confirm that it was his position that he was being given a complete payment holiday for the months of April, May and June 2020. Mr McInnes confirmed this and that what he was agreeing to pay when he mentioned this in the email correspondence was the increase in the Applicant's monthly mortgage interest payments after the mortgage break and not the 3 months' rent payments themselves. He was prepared to foot the bill for the increased interest payments until the end of the tenancy and did not consider that the Applicant was out of pocket as she then sold the Property for £157,000 and the mortgage was paid off from that. He maintained that he had been happy to pay the equivalent of the monthly mortgage interest increases and confirmed this to Countryside, as per the paperwork lodged. He referred to the confusion surrounding this and was therefore stunned that the matter then got to this stage.

11. When asked if parties had anything further to add, Miss Reid referred to the Council Tax situation and utility bills mentioned in the paperwork and previously discussed at the CMD. She is aware that these are not relevant to the issue to be decided today but thinks that, as the Respondent raised these issues again in the late submissions, she would wish to comment on them. She thinks that there was an attempt on the part of the Respondent to get out of paying some of the Council Tax due and referred again to the document from the local authority. She also referred to the extract that Mr McInnes has produced from Sparks energy supplier but stated that the outstanding utility bill that she has made reference to was £900 due to SSE. Mr McInnes responded that he has never been with SSE and that his energy throughout was from Sparks. He has explained his position about the Council Tax in his late submissions, essentially that the property they have purchased is a brand new build and there was a delay with credits being transferred over on the Council Tax system. As to the document from the local authority referring to their tenancy ending in August 2020 rather than December, Mr McInnes reiterated that this was an error on the part of the local authority.

## **Findings in Fact**

1. The Applicant was the joint owner and the landlord of the Property.

2. The Respondent was the joint tenant of the Property by virtue of a Short Assured Tenancy, commencing 31 May 2016.
3. The rent in terms of the tenancy was £650 per calendar month which had increased later in the tenancy to £665 per calendar month.
4. There had previously not been any issues with rent arrears, the parties appeared to have been on good terms and had verbally agreed around two years previously that the Respondents would purchase the Property from the Applicant once they had raised the appropriate finance.
5. In March/April 2020, due to the Coronavirus pandemic, the Respondent requested that the Applicant request a three-month mortgage break from her mortgage lender and, in turn, give the Respondent a three-month rent break which was agreed by the Applicant.
6. The Respondent did not thereafter make the rental payments due for April, May and June 2020, totalling £1,995.
7. The Applicant's letting agents corresponded with the Respondent on behalf of the Applicant during and after the 3 month period, with a view to agreement being reached as to the increased monthly payments to be made thereafter.
8. The Respondent resumed rental payments in July 2020 at the original monthly figure of £665 and maintained these payments throughout the remainder of the tenancy.
9. The Respondent was unable, for financial reasons, to proceed with the proposed purchase of the Property from the Applicant.
10. The Applicant put the Property on the market for sale around August 2020 and subsequently sold the Property to a third party.
11. The Applicant served notice on the Respondent to vacate the Property by 28 February 2021 (6 months' notice due to Coronavirus restrictions).
12. The Respondent, by agreement, vacated the Property earlier, on 29 December 2020.
13. On termination of the tenancy, no additional payments had been made by the Respondents towards the 3 months' rental payments outstanding.
14. The Respondent had been called on repeatedly to make payment or enter into a payment arrangement in respect of the arrears but has not done so.
15. The Respondent disputes liability for the 3 months' rent arrears, claiming that the agreement with the Applicant was that the 3 months' rent would be waived altogether, as opposed to payment of the rent being deferred.

16. The sum of £1,995 is due and resting owing to the Applicant in respect of rent arrears.

### **Reasons for Decision**

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, the written representations from both parties, the documents lodged in support of the representations and the oral evidence given at the Hearing by both parties.
2. The Tribunal was not persuaded by the Respondent's arguments as to why the rental payments for April, May and June 2020 are not due to be paid. There is contractual liability for payment of the monthly rent in terms of the tenancy agreement and, in the Tribunal's view, insufficient evidence to establish that there was a contrary agreement in place between the parties to the effect that liability for these 3 months' rental payments had been removed. It appeared from all the evidence before the Tribunal that the Applicant's position on what was agreed between the parties had been consistent throughout and there was nothing that could be pointed to in the documentary evidence lodged that indicated that the Applicant had agreed that the 3 months' rent was being waived altogether. On the contrary, there were several references in the paperwork to increased monthly payments requiring to be made by the Respondent following the 3 month period, which the Respondent had agreed to in writing and also conceded orally in his evidence (albeit the Respondent had an alternative explanation as to the basis for the increased payments). The Tribunal did recognise that the terms of the three-way email correspondence between Countrywide and each of the parties could perhaps have been clearer so that there was no room for doubt as to what had been agreed. Likewise, the Tribunal recognised that the proposed future purchase of the Property by the Respondent was a complicating factor and, had that gone ahead as planned, the situation may well have been different. However, whatever the Respondent's understanding of what was agreed at the outset of the 3 month period, the Tribunal noted that the Respondent had never specifically denied liability for the rent payments in writing, even when Countrywide invoked their formal rent arrears recovery processes on behalf of the Applicant.
3. The Tribunal determined, having regard to all of the circumstances, that an order for payment against the Respondent in the sum of £1, 995 should be made.
4. 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.**

**N Weir**

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**Legal Member/Chair**

**21 June 2021  
Date**