

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 71 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/19/2215

Re: Property at 65 Montrose Road, Polmont, Falkirk, FK2 0YN (“the Property”)

Parties:

Mr James Brownie, Mrs Patricia Brownie, 1 The Glebe, Linlithgow, West Lothian, EH49 6SG (“the Applicants”)

Miss Kelly Taylor, 65 Montrose Road, Polmont, Falkirk, FK2 0YN (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

This is an application for a payment order dated 15th July 2019 and brought in terms of Rule 111 (Application for civil proceedings in relation to a private residential tenancy) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicants sought in their application payment of arrears in rental payments of £1,675.00 in relation to the Property from the Respondent, and provided with their application copies of the Private Residential Tenancy agreement and rent arrears statement.

The tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*.

The Applicants explained that the sum sought had again increased since the application was submitted, and that the current rent arrears figure as of today's date was £2,860.00. The Applicants provided an up-dated copy rent arrears statement disclosing this amount.

The Respondent again confirmed that she fully accepted the rent arrears figure provided as at today's date, accepted that she was due this amount to the Applicants, and again apologised for the situation having occurred. She explained that she would only receive her first month's salary in her new employment at the end of this month, which was the reason she had not paid the last monthly rental due since the earlier Case Management Discussion.

The continued Case Management Discussion was held for the purpose of conducting a hearing on the Respondent's time to pay application.

After enquiry by the Tribunal, the Respondent accepted that she had miscalculated her total net outgoings, which based on the figures provided in section 4e of the Application form should total £835.17 per month, and not the figure of £1,045.12 shown.

However, she further explained that she should have added to her outgoings the sum of £225.84 per month, which is the repayment due on her car finance loan. Once that was added, her outgoings total £1,061.01 per month.

She confirmed that she had moved jobs and that she was working 28 hours per week, though she was hoping to increase the number of hours worked shortly.

She was left with free income of £221.21 per month after deduction of her outgoings from her total monthly income, of which she was able to offer £100.00 per month.

The Tribunal expressed concern that it would take 29 months to pay off the sums due at the rate offered. The Respondent indicated that her car finance loan payments would end in October 2020. From that date she would be able to make monthly payments at the rate of £326.00, and offered to do so.

The Respondent also indicated that she hoped to increase her hours of work, and if she did so, she would then hope to pay more than the initial £100.00 per month sought in the application as a result of her increased income.

The Tribunal asked the Applicants for their response to the revised offer, which if granted would take approximately 17 months to pay off the sums due.

The Applicants expressed concern about the length of time that it would still take to clear the debt, and their doubts that the Respondent would comply with any such order.

The Tribunal explained to both parties that if there was non-compliance with the order, then the Applicants might be entitled to enforce the order for the full amount

due if payments were missed. The Tribunal also explained that either party might apply to vary or recall the order in certain circumstances.

The Respondent indicated that if the Tribunal granted the application, then monthly payments could commence from 1st November 2019.

Statement of Reasons

The jurisdiction of the Tribunal in relation to Private Residential Tenancies, such as that which applied to the Property, is set by statute. Section 71(1) of the *Private Housing (Tenancies) (Scotland) Act 2016* provides:

"First-tier Tribunal's jurisdiction

(1) In relation to civil proceedings arising from a private residential tenancy—

(a) the First-tier Tribunal has whatever competence and jurisdiction a sheriff would have but for paragraph (b),

(b) a sheriff does not have competence or jurisdiction.

(2) For the purposes of subsection (1), civil proceedings are any proceedings other than—

(a) the prosecution of a criminal offence,

(b) any proceedings related to such a prosecution."

The Tribunal accordingly has jurisdiction to hear civil proceedings arising from a private residential tenancy such as between the parties in this application.

The Tribunal considered the terms of the private residential tenancy agreement, the copy rent arrears statement provided, and the submissions made by the parties in relation thereto and in relation to the Respondent's application for a time to pay direction, and was satisfied that these disclosed an outstanding balance of rent arrears in the sum sought of £2,860.00.

That leaves the Tribunal to consider the Respondent's revised time to pay direction application, which contains an offer to make payment initially at the rate of £100.00 per month for 12 months, and thereafter at the increased monthly rate of £326.00 per month. The Applicant does not accept that offer for the reasons noted earlier.

Sections 1 and 1A of the *Debtors (Scotland) Act 1987* as amended provides:

"1.— Time to pay directions.

(1) Subject to subsections (3) to (5) below and to section 14 of this Act, on an application by the debtor, the First-tier Tribunal, on granting decree for payment of any principal sum of money, shall, if satisfied that it is reasonable in all the circumstances to do so, and having regard in particular to the matters mentioned in subsection (1A) below, direct that any sum decerned for in the decree (including any interest claimed in pursuance of subsections (6) and (7) below) or any expenses in relation to which the decree contains a finding as to liability or both such sum and such expenses shall be paid—

(a) by such instalments, commencing at such time after the date of intimation by the creditor to the debtor of an extract of the decree containing the direction, payable at such intervals; or

(b) as a lump sum at the end of such period following intimation as mentioned in paragraph (a) above,

as the First-tier Tribunal may specify in the direction.

(1A) The matters referred to in subsection (1) above are—

(a) the nature of and reasons for the debt in relation to which decree is granted;

(b) any action taken by the creditor to assist the debtor in paying that debt;

(c) the debtor's financial position;

(d) the reasonableness of any proposal by the debtor to pay that debt; and

(e) the reasonableness of any refusal by the creditor of, or any objection by the creditor to, any proposal by the debtor to pay that debt.”

The Respondent's application indicates that her total income per month is £1,282.22. Her monthly outgoings total £1,061.01, leaving her with free income of £221.21 per month.

She has no other assets, and accordingly is unable to make payment of the rent arrears other than from her free income. She offers to make monthly payments of £100.00 per month for 12 months, after which she offers to make monthly payments of £326.00 per month as a result of her no longer requiring to pay £225.84 per month due to her paying off her car finance loan.

This offer would result in repayment in approximately 18 months. If the Respondent succeeds in increasing her hours of work, and therefore increases her income, she has indicated that she will increase the monthly payments to attempt to pay off the sums due more quickly.

The Tribunal has considerable sympathy with the Applicants' complaint about the delay in repayment of the sums due to them. The Applicants have previously attempted to assist the Respondent in agreeing repayment terms. However, having regard to the factors set out in section 1A above, the Tribunal considers it reasonable to make a time to pay direction in terms of the revised offer made by the Respondent.

The Respondent has always candidly admitted her liability for the sums sought. She has explained that she fell behind with her rent due to employment difficulties and loss of previous positions, and an injury which resulted in her losing wages whilst off work.

Standing her financial position, the revised offer appears reasonable. If she defaults significantly on the terms of the direction, she risks enforcement action by the Applicants for the whole sum granted in the order without the benefit of time to pay.

For these reasons, the Tribunal shall make an order for payment with a time to pay direction.

Decision

In these circumstances, the Tribunal will make an order for payment by the Respondent to the Applicants of the sum of £2,860.00, with a time to pay direction under Section 1(1) of the Debtors (Scotland) Act 1987 of twelve monthly payments of £100.00 per month to be followed thereafter by monthly payments of £326.00 until the full amount has been paid, with the first payment to be made no later than 1st November 2019 after intimation of the order.

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.

Neil Kinnear

Legal Member/Chair

21/10/19

Date