

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/19/2420

Re: Property at 8 Larch Place, Johnstone, PA5 9TD (“the Property”)

Parties:

Mr Surjit Singh, 11 Barnhill Drive, Newton Mearns, Glasgow, G77 5FY (“the Applicant”)

Miss Kirsty Reynolds, Ms Debra Reynolds, 62 Burns Drive, Johnstone, PA5 0HB (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision (in absence of the Respondent)

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 £2,099.09 by instalments in the sum of £20 per week.

Procedural Background:

The Applicant is seeking an order for payment of rent arrears and reimbursement for removing rubbish and painting works for the property. An application in terms of Rule 70 of the Rules of Procedure was lodged 31 July 2019 and the sum outstanding stated as £1,349.09 and £750 maintenance.

The first named Respondent was the tenant for the property under the tenancy agreement, the second named Respondent the Guarantor in terms of the tenancy agreement.

PHM

A Case Management Discussion (CMD) had been scheduled for 1 October 2019 at 11.30 in Glasgow. This had been intimated to all parties and in particular had been intimated to the second named Respondent by Sheriff Officers on 26 August 2019. All parties had been advised that a decision can be made at a CMD.

The first named Respondent had lodged an application for a Time to Pay Direction dated 1 September 2019 which was received by the Tribunal on 16 September 2019. The Applicant had agreed to this through his representative Mr Johnstone on 20 September 2019.

There had been no representations from the second named Respondent.

There was no attendance at the CMD.

The Case Management Discussion:

There was no attendance at the CMD. There had been no representations made by the second named Respondent to the Tribunal. The Tribunal contacted the Applicant's representative as they had intimated by email on 28 August 2019 that a Helen Canning would be attending. The Applicant's representatives advised that as they had accepted the payment proposal they had been unaware that the CMD would still go ahead and thus had not sent a representative.

Findings in Fact:

- 1. The Applicants and the Respondents entered into a short assured tenancy agreement commencing on 14 October 2016.**
- 2. The rent payable was £580 per month payable in advance (clause 3)**
- 3. As per the calculation in the rent statement the arrears of rent as at 1 October 2019 are £1,349.09.**
- 4. When the tenant left the property it was left in a state that necessitated removal of rubbish and painting works resulting in expenses to the Applicant of £750 as per the Invoice from Steven Drummond dated 5 March 2019**
- 5. The second named Respondent had agreed to act as Guarantor for all amounts due to the landlord arising from the tenancy agreement in terms of clause 21.6 of the tenancy agreement and had signed the tenancy agreement to that effect on 14 October 2016.**
- 6. The first named Respondent had acknowledged the amount outstanding as due and lodged a Time to Pay Direction application offering to pay the outstanding amount at the rate of £20 per week.**
- 7. This was accepted by the Applicant through his representative on 20 September 2019.**
- 8. At this rate payment of the full sum of £2,099.09 will take 2 years and one week.**

Reasons for the Decision:

The Tribunal has jurisdiction in terms of S16 of the Housing (Scotland) Act 2014 as both the debt concerning the first named Respondent and the guarantee liability arising from the guarantee agreement incorporated into the tenancy agreement are matters arising from the an assured tenancy.

The Tribunal considered that the facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

(d) discussing what witnesses, documents and other evidence will be required;

(e) discussing whether or not a hearing is required; and

(f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

However, in terms of Rule 18 of the Rules of Procedure:

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

The documents lodged are referred to for their terms and held to be incorporated herein.

The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case.

The Tribunal make the decision on the basis of the written evidence lodged by both parties in form of the original application, copy tenancy agreement including guarantee provisions in clause 21.6 of the tenancy agreement, Account Statement dated 31 July 2019, and invoice from Steven Drummond dated 5 March 2019.

The facts in the case are not disputed.

The rent and repairs amount outstanding as of the date of the CMD based on the amounts paid as per the rent statement and the invoice is £2,099.09. There was no defence to the action. It is not in dispute that the amount is due by the Respondents to the Applicant. The first named Respondent lodged a time to pay application at the CMD which was agreed by the Applicant. The second named Respondent has not lodged any representations denying liability for the amount outstanding and although the time to pay direction was not lodged by her, she is not prejudiced by the time to pay direction as without the time to pay direction the Tribunal would have been entitled to make a payment order for the full amount at the CMD.

The Applicant is entitled to payment of the sum of £2,099.09

The Tribunal grants the order as rent and expenses for maintenance for the property lawfully due to the Applicant by the Respondents 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 Respondents' 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 would be cleared within 2 years and one week. It is clear from the financial statement that in the current circumstances the first named Respondent would not be able to afford a higher payment rate.

Decision

The Tribunal grants an order against the Respondents for payment of the sum of £2,099.09 to the Applicant. The Tribunal also makes a time to pay direction allowing payment to be made by instalments of £20 per week.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

Petra Hennig-McFatridge

Legal Member/Chair

1. 10. 19

Date