



**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/19/3080

**Re: Property at 5 Moran Court, East Academy Street, Wishaw, ML2 8FB (“the
Property”)**

Parties:

**Mrs Margaret Nelson, Mr Robert Nelson, 6 Heather Row, Carluke, Lanarkshire,
ML8 5EG (“the Applicants”)**

**Mr Terry Bradley, Mrs Karen Bradley, 5 Moran Court, East Academy Street,
Wishaw, ML2 8FB (“the Respondents”)**

Tribunal Members:

Joel Conn (Legal Member)

Decision (in absence of the Respondents)

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

Background

1. This is an application by the Applicants for civil proceedings in relation to an assured tenancy in terms of rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”), namely an order for payment of rent arrears. The tenancy in question was an Assured Tenancy (said to be a Short Assured Tenancy) of the Property by the Applicants to the Respondents dated 17 October 2017.
2. The application was dated 27 September 2019 and lodged with the Tribunal shortly afterwards. The application was accompanied with a rent statement showing purported arrears to that date of £2,800 being missed rental payments of 18 March to 18 September 2019, each of £550 a month less payments of £500 and £550 received in May and August 2019 which the Applicants had

then allocated to the rent of 18 March and 18 April 2019 (leaving £50 still due on the April rent). (Further investigation of the documentation suggested that rent was actually due on the 17th of the month.)

The Hearing

3. On 6 December 2019, at a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting at Glasgow Tribunals Centre, I was addressed by the First Applicant.
4. There was no appearance by the Respondents but the First Respondent had submitted written submissions and a Time to Pay application. Further, on 29 November 2019 the First Respondent emailed the Tribunal to seek an adjournment on the basis that both of the Respondents had commitments for 6 December 2019 that they could not now alter. The First Respondent confirmed that if this adjournment was not granted they “will adhere to any decision the tribunal will make in our absence”. I refused that request for the adjournment in light of the Time to Pay application conceding the sum sued for and instructed the Tribunal’s clerk to write to the Respondents confirming that the submissions lodged would be considered at the CMD.
5. The First Applicant confirmed that the application was still insisted upon and that arrears to 6 December 2019 were now £3,900 as no payment had been received for the rent due on 18 October and 18 November 2019. The First Applicant confirmed that only two payments of rent had been received since March 2019, being £500 on 7 May 2019 and £550 sometime in August 2019.
6. In regard to the Time to Pay application dated 18 November 2019, the First Respondent had submitted an application in slightly unclear terms. Looking at it less restrictively, it proposed £300 per month against the arrears of £2,800. This was based on an excess of income over outgoings (per the categories set out in the Time to Pay application form) of net £490. The First Applicant objected to the Time to Pay application on two grounds. First, she questioned whether the figures included the Second Respondent’s income and, if not, whether the Respondents’ net disposable funds were higher. Second, in light of the figures in the form including £550 paid to rent, which was not being paid, and the history of poor payment, she did not believe any Time to Pay order would be adhered to.
7. These objections were also made, in terms, in an email by the Applicants to the Tribunal on 26 November 2019 in advance of the CMD. At that time, I had instructed the Tribunal’s clerk to write to the Respondents to seek clarification in regard to the first of these objections (that is, whether the figures were their total household income and outgoings and, if not, provide corrected figures). Though the First Respondent responded to the email with some further submissions, this point was not answered.

Findings in Fact

8. On 17 October 2017, the Applicants let the Property to the Respondents by lease with a start date of 17 October 2017 to terminate on 16 October 2018 "and after that on a calendar monthly basis" ("the Tenancy").
9. On 6 January 2019, the parties entered into a document entitled "Extension to Short Assured Tenancy Agreement" which stated that the "tenancy will be extended from 6 January 2019... until the 5th January 2020 and after that on a calendar monthly basis" ("the Extension").
10. Under both the Tenancy and the Extension, the Respondents were to make payment of £550 per month in rent in advance to the Applicants on or before the 17th of each month.
11. As of 27 September 2019, there was unpaid rent of £2,800 due by the Respondents to the Applicants in terms of the Tenancy in respect of a balance of £50 due on the rental payment due on 17 April 2019 and missed rental payments due on 17 May, 17 June, 17 July, 17 August, and 17 September 2019 of £550 each.
12. On or about 27 September 2019, the Applicants raised proceedings for an order for outstanding rent due to that date in the sum of £2,800.
13. A Sheriff Officer acting on the instructions of the Tribunal served the application and intimation of the CMD upon each of the Respondents on 1 November 2019.
14. By Time to Pay application dated 18 November 2019, the First Respondent admitted liability for the sum of £2,800 as sought in the application.
15. The Respondents provided no evidence of payment of any part of the said unpaid rent due to 27 September 2019 of £2,800.

Reasons for Decision

16. The application was in terms of rule 70, being an order for civil proceedings in relation to assured tenancies. I was satisfied, on the basis of the application and supporting papers, and the admission contained in the Time to Pay application, that rent arrears of £2,800 were outstanding for the period to 27 September 2019 (covering the rental up to 16 October 2019) and remained outstanding at the date of the CMD.
17. A question arose as to whether such sums were due under the Tenancy as an Assured Tenancy or whether the Extension functioned as a new lease which, given the date of the Extension, would have been a Private Residential Tenancy. This would not have had any relevance to the liability as a contractual liability to pay rent would exist whether under an Assured Tenancy or a PRT. It would be relevant as to whether the application should more correctly proceed

under Rule 111 of the Procedure Rules (and therefore whether I was empowered to grant an order under section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 rather than section 16 of the Housing (Scotland) Act 2014). I would have jurisdiction either way and so reserve my view on whether the Respondents actually have a PRT. My choice to issue this Decision under Rule 70 and section 16 of the 2014 Act is one of convenience and nothing more.

18. In all the circumstances, I was thus satisfied that the necessary level of evidence for such civil proceedings on the sum of £2,800 had been provided and, in any event, consented to by the First Respondent.
19. In regard to the Time to Pay application, in normal circumstances an application to repay within 12 months (in this case within 10 months) would be compelling. Even if I were to assume that the figures are the total household income (which the Respondents were asked to confirm and did not), I share the Applicants' cynicism about the Time to Pay application. It was dated 18 November 2019 and based on monthly outgoings which included £550 of rent which was not actually being paid. I accept the objection that it is not reasonable to grant the Time to Pay order as there is significant doubt whether the application would be adhered to, given that no attempt has been made to make any payment of rent for months and the Time to Pay application refers only to the First Respondent's hope to return to work in early course (rather than a material change of circumstances). Even if there was a material change of circumstances that had just occurred, the failure to have paid any amount of the rent due on 17 November by the date of the CMD raises a valid question as to whether the proposal had a genuine chance of being adhered to. Given the length of time rent has gone materially unpaid, I do not see it as reasonable to delay the Applicants' rights to recover further by granting a Time to Pay order.
20. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal and I was satisfied to make a decision at the CMD to award the sum of £2,800 against the Respondents along with judicial interest of 8% per annum on that sum from today's date until payment.
21. I noted that the application was limited to the rent arrears due under the lease to 17 October 2019 and the Applicants reserved their position in regard to any further claim under the lease against the Respondents.

Decision

22. In all the circumstances, I was satisfied to make the decision to grant an order against the Respondents for payment of the sum of £2,800 to the Applicants with interest at 8% per annum from 6 December 2019 until payment and refused the Time to Pay application.

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.

Joel Conn

Legal Member/Chair

06 December 2019

Date _____