

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/18/3181

Re: Property at 55 Mitchell Street (2/8), Glasgow, G1 3LN (“the Property”)

Parties:

Mr Adrian Tan, Mrs Lay Ean Tan, c/o D J Alexander Lettings Ltd, 1 Wemyss Place, Edinburgh, EH3 6DH (“the Applicants”)

Mr Michael Robertson, Mr Stephen Robertson, 55 Mitchell Street (2/8), Glasgow, G1 3LN; 1 Morton Court, Mairs Road, Darvel, East Ayrshire, KA17 0LA (“the Respondents”)

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 26th February 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 seek payment of arrears in rental payments of £7,972.00 in relation to the Property from the Respondents, and provided with their application copies of the Private Residential Tenancy agreement and copy 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 Respondents have been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 11th and 12th April 2019, and I was provided with the executions of service.

A Case Management Discussion was held on 10th June 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicants did not appear, but were represented by Mr Gibb and Ms Bruce, letting agents. The Respondents both appeared, and were not represented.

The Applicant noted that the First Respondent was the tenant of the Property, and that his father, the Second Respondent, had signed the lease as guarantor. Rent arrears had been accruing over a number of months and now totalled £7,972.00.

The Respondents confirmed to the Tribunal that they both accepted their liability under the lease agreement for rent arrears, and they both candidly accepted that those rent arrears amounted to the sum sought of £7,972.00.

The First Respondent explained that his business had run into difficulties at the end of 2018, and had to cease trading. He was now unemployed and in financial difficulties with no income. He was attempting to obtain new employment and was hopeful he would do so shortly.

The Second Respondent explained that his personal circumstances had changed due to family illness which had affected his income, and that as a result he too had reduced financial circumstances.

Both were keen to repay the sums which were due to the Applicants, but were financially unable to do so in one payment. The First Respondent indicated that he was in the process of vacating the Property and was about to hand back the keys to the Applicants' letting agents.

Mr Gibb invited the Tribunal to grant the order sought in the application, and the Respondents confirmed that they could not oppose that.

The Tribunal brought the Respondents' attention to the possibility of their both making an application for a time to pay direction in terms of Rule 41H of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, and the Respondents indicated that they wished to do this.

The Tribunal clerk provided the Respondents with the appropriate application forms, and the Tribunal explained the procedure to those present.

The Respondents indicated that they could complete and return the application forms to the Tribunal by Monday 24th June 2019. Mr Gibb indicated that if the Respondents did so, he would discuss the applications with the Applicants and respond confirming whether they objected to the granting of the applications as sought or not.

The Tribunal agreed to issue a Direction to the Respondents to return the completed application forms by close of business on Monday 24th June 2019, and to continue this Case Management Discussion to a further date.

The Second Respondent complied with the direction and submitted a time to pay application containing an offer of instalments of £150.00 per month. The Applicants did not accept this offer, on the basis that it would take approximately 4 years and 6 months for the sum due to be paid.

The First Respondent did not comply with the direction, and did not submit a time to pay application.

Continued Case Management Discussion

A continued Case Management Discussion was held on 30th July 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicants did not appear, but were again represented by Mr Gibb and Ms Bruce, letting agents. The First Respondent did not appear, nor was he represented. The Second Respondent again appeared, and was not represented.

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

The Second Respondent advised the Tribunal that he had re-arranged his finances, and was now in a position to offer payment by monthly instalments of £450.00.

After a brief adjournment to allow Mr Gibb to take the Applicants' instructions by telephone, the continued Case Management Discussion resumed. Mr Gibb confirmed that the Second Respondent's revised offer was acceptable, and he agreed with the Second Respondent that the first payment should be made on 1st September 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 updated rent arrears statement provided, and the submissions made by the parties in relation thereto and in relation to the Second 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 £7,972.00.

Accordingly, the Tribunal shall make an order for payment of that sum, with a time to pay direction in respect of the Second Respondent of monthly instalments of £450.00 commencing with a first payment on 1st September 2019.

Decision

In these circumstances, the Tribunal will make an order for payment by the Respondents jointly and severally to the Applicants of the sum of £7,972.00, with a time to pay direction under Section 1(1) of the Debtors (Scotland) Act 1987 in respect of the Second Respondent of £450.00 per month until the full amount has been paid, with the first payment to be made no later than 1st September 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.

N K.

Legal Member/Chair

30/07/19

Date