

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision 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/19/1734

Re: Property at 1 Woodstock Drive, Wishaw, ML2 7DP (“the Property”)

Parties:

Miss Jill Dougan, C/O 139 Main Street, Wishaw, ML2 7AU (“the Applicant”)

Mr Ben Carson, 1 Woodstock Drive, Wishaw, ML2 7DP (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision (in absence of the Respondent)

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

Background

This is an application for a payment order dated 3rd June 2019 and brought in terms of Rule 70 (Application for civil proceedings in relation to an assured tenancy under the 1988 Act) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant sought in her application payment of arrears in rental payments of £5,144.15 in relation to the Property from the Respondent. The Applicant provided with her application copies of the short assured tenancy agreement and rent arrears statement.

The short assured tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

The Respondent has been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 13th August 2019, and the Tribunal was provided with the executions of service.

Case Management Discussion

A Case Management Discussion was held on 19th September 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant did not appear, but was represented by Mr Kane, solicitor. The Respondent did not appear, nor was he represented.

The Respondent had submitted a time to pay direction application received by the Tribunal on 5th September 2019. The Applicant submitted a response dated 13th September 2019 indicating that she did not accept the proposal for payment made in the application.

The Respondent subsequently e-mailed the Tribunal on a number of occasions over the period from the 16th September to 19th September 2019 in response to his receipt of the Applicant's response form.

He variously indicated that if his offer was not accepted and a higher amount ordered, then he would leave his job and any order would only be met by a payment of £5.00 per week from his jobseeker's allowance, and that he had not been paying rent as result of the Property not having a hot water supply due to a broken boiler.

Finally, he e-mailed the Tribunal at 9.09am on the morning of the Case Management Discussion requesting a postponement on the basis that he was working and could not get time off to attend. He indicated in relation to the Case Management Discussion that "I was under the impression it was delayed to see if the time to pay went through".

The Tribunal noted that the Respondent had been advised by the Tribunal on several occasions, and as recently as by e-mail on 18th September, that the Case Management Discussion would proceed on 19th September 2019 at 10.00am. The Respondent gave no explanation as to why he had only sought a postponement within an hour of the commencement of the Case Management Discussion.

Mr Kane indicated that the Applicant opposed the request for a postponement, which came far too late in the day, and for which no proper and acceptable reason was given. Further delay by postponement of this application would be prejudicial to the Applicant standing the large amount of rent arrears which had accrued.

The overriding objective of the Tribunal is to deal with proceedings justly. This includes *inter alia* dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties; ensuring, so far as practicable, that the parties are on equal footing procedurally and are able to participate fully in the proceedings; and avoiding delay, so far as compatible with the proper consideration of the issues in terms of Rule 2 of *The First-tier Tribunal for*

Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended.

Rule 28 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended allows the Tribunal discretion on an application by a party to adjourn a hearing on cause shown.

The Tribunal refused the Respondent's request to postpone for the following reasons. The request came only 51 minutes before the Case Management Discussion was due to commence, and no reasonable explanation was given for the lateness of the request.

Further, no good reason was given for the request. The Respondent has been aware of this Case Management Discussion for several weeks, and should have made arrangement either to attend, to arrange for a representative to attend on his behalf, or to submit written representations for the Tribunal to consider. He has done none of these things.

The Applicant opposed the request, on the basis that the sum sought is very substantial, and it would be prejudicial to her for the matter to be delayed further. The Tribunal accepted that submission.

The Tribunal was invited by Mr Kane to with reference to the application and papers to grant an order for payment of the sum of £4,719.15. Mr Kane explained that since the application was lodged, he had calculated the correct figure due in rent arrears up to and including June 2019, which was the sum now sought.

The figure in the application form had been obtained from the Applicant's letting agents at an earlier stage and was incorrect. Mr Kane indicated that rent arrears continued to accrue, and that rent arrears for July, August and September 2019 together with any further sums of rent arrears which might accrue in the future would be subject to a further application to the Tribunal in due course.

Mr Kane opposed the granting of a time to pay direction. He strongly argued that the application form completed by the Respondent showed that he could easily afford to pay more than the £60.00 per week offered, and that in those circumstances it would be unreasonable to make a time to pay direction at the figure offered.

Mr Kane also sought interest upon the sum sought.

Statement of Reasons

Section 16 of the *Housing (Scotland) Act 2014* provides as follows:

"16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3) Part 1 of schedule 1 makes minor and consequential amendments.”

Accordingly, the Tribunal now has jurisdiction in relation to claims by a landlord (such as the Applicant) for payment of unpaid rental against a tenant (such as the Respondent) under a short assured tenancy such as this.

The Tribunal considered the terms of the short assured tenancy agreement, the copy rent arrears statement provided, and Mr Kane’s submissions, and was satisfied that this disclosed an outstanding balance due by the Respondent to the Applicant in respect of rent arrears accrued until and including June 2019 of £4,719.15. The Respondent in submitting his application for a time to pay direction admits the claim.

Accordingly, the Tribunal shall make an order for payment of that sum.

The Applicant also seeks interest on that amount in terms of Rule 41A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

In terms of that rule, the Tribunal may include interest at the rate either stated in the tenancy agreement, or ordered by the Tribunal.

Mr Kane confirmed that he sought interest at the judicial rate prescribed in the *Administration of Justice (Scotland) Act 1972* as amended. However, these provisions which apply in the sheriff court to award interest on decrees at the judicial rate of 8% do not apply to the Tribunal. That being so, Mr Kane submitted that it is for the Tribunal to order what rate to apply.

In the absence of any guidance on this matter, it appears to the Tribunal to be just to award interest at a rate representing the investment or borrowing rate of lending banks for short term loans, which is currently approximately 3% per annum, and the Tribunal will accordingly do so. Mr Kane indicated that he was content with that approach.

That leaves the Tribunal to consider the Respondent’s time to pay direction application, which contains an offer to make payment at the rate of £60.00 per week. 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 decreed 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 is not supported by any vouching or evidence at all in relation to the figures which he provides. He states that his wages are £450.00 per week, which is approximately £64.29 per day. Accordingly, for a 30 day month, the Respondent's income appears to be £1,928.57.

The Respondent states that his total outgoings, which include rent, council tax, utilities including gas and electricity supply, food, finance costs, telephone charges, maintenance and childcare costs, and travel costs, amount to £1,155.00.

On the figures provided by the Respondent, therefore, he has monthly free income after deduction of his outgoings of £773.57. The Respondent states that his offer is 30% of his wages, which is incorrect, as it is in reality 13% of his wages.

Albeit that his offer would result in repayment in a little over 18 months, the Tribunal accepted Mr Kane's submission that the Respondent's offer, which equates to approximately £257.14 per month, is not reasonable in circumstances where the Respondent has available free income of £773.57 per month, owes the Applicant £4,719.15, and has made no payment of rent whatsoever for the last seven months of his tenancy of the subjects.

On the face of the Respondent's application, he should be capable of making payments at a considerably higher amount than £60.00 per month, and no reasonable explanation is given as to why he cannot do so.

Having regard to the factors set out in section 1A above, the Respondent has amassed considerable arrears over a substantial period. Since the commencement of the tenancy in May 2017, the Respondent has only made full payment of the monthly rental on four occasions. He has failed to make any payment of monthly rental at all on nine occasions, and has made no payment at all of monthly rental for the last seven months to date.

The Applicant's agents have made several attempts to resolve the rent arrears situation with the Respondent without success.

The Respondent appears from the information he has provided to be capable of making repayments at a significantly higher amount than he is offering. The Tribunal considers that the offer is not reasonable standing his financial circumstances and the amount outstanding in rent arrears, and that the Applicant's refusal of the offer is reasonable.

For those reasons, the Tribunal will not grant the application for a time to pay direction.

Decision

In these circumstances, the Tribunal will make an order for payment by the Respondent to the Applicant of the sum of £4,719.15, with interest thereon at the rate of three per cent per annum from the date of the decision of the Tribunal until payment.

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.

Neil Kinnear

Legal Member/Chair

19/09/19

Date