



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/18/2729

Re: Property at 40 Caledonian Road, Wishaw, ML2 8AR (“the Property”)

Parties:

Mr Beka Kurmashvili and Mr Mikael Linden, 1 Murray Road, Law, Carluke, ML8 5HR; 4 Muirhead Drive, Motherwell, ML1 5TG (“the Applicants”)

Ms Fiona Sheridan, 40 Caledonian Road, Wishaw, ML2 8AR (“the First Respondent”) and Ms Jean Sheridan, 96 Leighton Street, Wishaw, ML2 8BQ (“the Second Respondent”)

Tribunal Members:

Shirley Evans (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment of THREE THOUSAND NINE HUNDRED AND TEN POUNDS (£3910) STERLING with Time to Pay Directions. The order for payment will be issued to the Applicants after the expiry of 30 days mentioned below in the right to appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by either Respondent.

Background

1. By application dated 12 October 2018 under Rule 111 of the First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”) the Applicants applied to the Tribunal for an order for payment against the Respondents in relation to rent arrears. The application proceeded against the First Respondent as Tenant and against the Second Respondent as Guarantor.

2. On 14 January 2019 the Tribunal gave notification of acceptance of the application to the Applicants.
3. On 28 January 2019 the Tribunal enclosed a copy of the application and invited the First Respondent to make written representations to the application by 15 February 2019. The Tribunal also advised the Applicants and the First Respondent on 28 January 2019 that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 20 February 2019. This paperwork was served on the First Respondent by David Orr, Sheriff Officer, Motherwell on 29 January 2019 and a certificate of execution was received by the Tribunal. No intimation was made on the Second Respondent.
4. The First Respondent did not make any written representations by 15 February 2019.
5. The CMD proceeded on 20 February 2019. Both Applicants were in attendance. Neither Respondent was in attendance. The CMD was continued for the Applicants to provide additional documents to the Tribunal together with confirmation of the amount of rent due.
6. A further CMD was assigned to proceed on 2 April 2019. On 12 March 2019 the Tribunal enclosed a copy of the application with papers on the Respondents. The Tribunal also advised the Applicants and the Respondents on 12 March 2019 that a CMD under Rule 17 of the Regulations would proceed on 2 April 2019. This paperwork was served on the Respondents by Damian Cusick, Sheriff Officer, Hamilton on 13 March 2019 and certificates of execution were received by the Tribunal.
7. The CMD proceeded on 2 April 2019. Both Applicants were in attendance. Neither Respondent was in attendance. The CMD was continued for the Applicants to provide additional documents to the Tribunal.
8. A further CMD was assigned to proceed on 23 April 2019. On 4 April 2019 the Tribunal enclosed a copy of the application with papers on the Respondents. The Tribunal also advised the Applicants and the Respondents on 4 April 2019 that a CMD under Rule 17 of the Regulations would proceed on 23 April 2019. This paperwork was served on the Respondents by Alan Davie, Sheriff Officer, Glasgow on 5 April 2019 and certificates of execution were received by the Tribunal.
9. The CMD proceeded on 23 April 2019. Both Applicants were in attendance. Both Respondents were in attendance. The CMD was continued to 29 May 2019 for the Applicants to consider whether they wished to proceed with the conjoined eviction action and for the Respondents to make Time to Pay Applications under the Debtors (Scotland) Act 1987.

Case Management Discussion

10. The CMD proceeded on 29 May 2019. Mr Kurmashvili was in attendance. He appeared on behalf of Mr Linden also. Both Respondents were in attendance.
11. The Tribunal had before it a copy of the Private Residential Tenancy Agreement between the parties relating to the Property, Business Current Account bank statements from 5 May 2018 - 5 March 2019, a list of transactions on the same bank account from 17 May 2018 – 13 March 2019, an email dated 7 January 2019 from Mr Kurmashvili with a Landlord request for a managed payment from Universal Credit form addressed to the Department of Work and Pensions, a letter dated 27 March 2019 from the Department of Work and Pensions that payment of £495 would be paid to the Applicants and emails between Mr Kurmashvili and the First Respondent with Mr Linden and the second Respondent copied in dated 28 and 29 March 2019.
12. Both Respondents advised the Tribunal they had sent the Tribunal Time to Pay Applications for a time to pay order. After enquiries it was established that neither Time to Pay Application had been received by the Tribunal administration. Both Respondents had retained copies of their respective applications and handed these to the Tribunal. Mr Kurmashvili had not received a copy of the applications. The Tribunal had a short adjournment for copies of the applications to be made for the Tribunal and Mr Kurmashvili and for these to be considered.
13. The Tribunal considered the Time to Pay applications. After a short adjournment and on being satisfied that Mr Kurmashvili had had an opportunity to consider the Time to Pay applications the CMD continued.
14. The Tribunal enquired as to the current level of arrears. The First Respondent advised that the arrears were currently £3910 not including May 2019's rent. After some discussion Mr Kurmashvili agreed that that was indeed the amount of arrears. When asked separately whether they accepted the arrears of £3910 were due, each Respondent separately confirmed that arrears in the sum of £3910 were outstanding.
15. The Tribunal enquired whether in the circumstances Mr Kurmashvili wanted to increase the sum sought under the application from £2725 to £3910. He confirmed he did. In the circumstances the Tribunal was prepared to allow the sum sought to be so increased there being no prejudice to the Respondents both of whom accepted the arrears were due in the increased sum.
16. The Tribunal asked the second Respondent whether she accepted she was the Guarantor under the tenancy agreement. She advised that she accepted that and that she understood that the money due had to be paid and that she was liable to pay the money.

17. The Tribunal made enquiries as to when the tenancy agreement was signed. The first Respondent advised this was on the 21 May 2018. This was confirmed by Mr Kurmashvili. The second Respondent also confirmed that she has signed as Guarantor on 21 May 2018. Parties were in agreement that they had had to sign the tenancy agreement again on 16 November 2018 after the Tribunal had asked for a signed copy of the tenancy agreement as the original agreement was signed electronically.
18. The Tribunal enquired as to the current position in relation to the payment of Universal Credit. Mr Kurmashvili advised he was receiving £495 per month. The first Respondent accepted that did not cover the full rent of £545 but that she was proposing to pay £100 per month to cover the shortfall of £50 with another £50 per month towards the arrears. She also explained that she had applied for Discretionary Housing Payment and was seeking advice from the Citizens' Advice Bureau and a Welfare Rights Officer.
19. The second Respondent proposed that she contribute £200 per month towards payment of the arrears as Guarantor. She explained she would set up a Standing Order. Both Respondents stated that if they had any extra money they would put that towards the arrears and pay extra to the Applicants.
20. The Tribunal asked Mr Kurmashvili if he was prepared to accept the proposals for repayment from the Respondents. He confirmed he was and that in the circumstances he would withdraw the application for eviction. Parties were in agreement that payments should be made on 28th of each month.

Findings In Fact

21. By way of a Private Residential Tenancy Agreement ("the tenancy agreement") commencing on 21 May 2018 and signed and dated 21 May 2018 and then again on 16 November 2018, the Applicants agreed to Lease the Property to the Respondent at a monthly rent of £545. The Respondent is liable to pay rent to the Applicants in terms of Clause 7 of the tenancy agreement.
22. In terms of Clause 37 of the tenancy agreement the second Respondent agreed to act as Guarantor for the first Respondent under the tenancy agreement. The second Respondent signed the tenancy agreement as Guarantor on 21 May 2018 and then again on 16 November 2018. The second Respondent is liable for the obligation to pay rent should the first Respondent fail to do so.
23. The first Respondent has fallen into rent arrears. The arrears as at the date of the application on 12 October 2018 were £2725. These have increased to £3910 as of 29 May 2019.

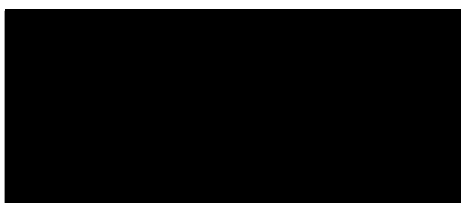
24. The Applicants are receiving £495 per month as of 28 February 2019 from Universal Credit towards the monthly rent. There is a shortfall of £50 per month.
25. The first Respondent proposed to make up the shortfall of £50 per month and to make a monthly payment of £50 towards the arrears. This was acceptable to Mr Kurmashvili.
26. The second Respondent proposed to make monthly payments of £200 by way of Standing Order to the Applicants towards the arrears incurred by the first Respondent. This was acceptable to Mr Kurmashvili.

Reasons for Decision

27. The Tribunal allowed the application to be amended on Mr Kurmashvili's verbal motion during the CMD to an increased sum of £3910 in terms of Rule 13 of the Regulations. In light of the Respondents' acceptance of liability for the arrears of £3910, the Tribunal was prepared to allow the application to be amended to reflect the fact that arrears had increased to £3910, the Tribunal being satisfied that they were not prejudiced by such an amendment.
28. In light of the documents before the Tribunal and in light of both Respondents accepting liability under the tenancy agreement as tenant and as Guarantor the Tribunal was prepared to grant an order for payment. Further having considered the Time to Pay applications made by the Respondents and with the agreement of Mr Kurmashvili, the Tribunal made time to pay directions under Section 1 (1) (a) of the Debtors (Scotland) Act 1987 all as set out in 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.



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29 May 2019.
Date