



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 (1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/22/0763

Re: Property at 10 Berryhill Circle, Westhill, Aberdeenshire, AB32 6BE (“the Property”)

Parties:

Mr Sunday Philip Attah, Mrs Cynthia Ogbeyiwa Attah, NFDD7203, Box 9857, Dhahran, 31311, Saudi Arabia (“the Applicants”)

Mrs Michelle Reay, Mr Martin Reay, 1 Whitehorse Buildings, Balmedie, Aberdeen AB23 8XR; Unknown, Unknown (“the Respondents”)

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision (in absence of the first named Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order for the amount of £ 7,037.62 by the Respondents to the Applicants should be granted.

Background

1. The application for an order for payment of rent arrears under S 71 of the Private Housing (Tenancies) (Scotland) Act 2016 arising from a Private Residential Tenancy Agreement between the parties was made by the Applicant's representatives Ms Elder from Aberdeen Considine & Company on 14 March 2022.
2. The following documents were lodged to support the application:
 - a. Copy tenancy agreement between the parties over the property commencing on 24 July 2020
 - b. Tenancy rent statement from 6 January 2021 to 15 June 2021
 - c. Service by Advertisement application and Sheriff Officer report for Mr Reay
3. On 31 May 2022 the application and notification of the Case Management Discussion (CMD) was served by Sheriff Officers with on Michelle Reay. As the

Applicants had provided evidence of a negative trace of Mr Reay by Sheriff Officers service on Mr Reay was undertaken by advertisement in terms of rule 6A of the Procedural Rules. The Tribunal was satisfied that both Respondents had the required notice of the CMD as set out in Rules 17 (2) and 24 (2) of the Procedural Rules.

4. No representations from the first named Respondent were received by the Tribunal.
5. On 26 May 2022 the second named Respondent contacted the Tribunal and stated he had entered into a payment plan.
6. On 11 July 2022 at 18:33 hours Mr Reay sent an email to the Tribunal asking for a postponement of the CMD as he was working in Senegal.
7. On 12 July 2022 the Tribunal emailed him to ask for confirmation of his location and asking why this had not been intimated earlier.
8. On 12 July 2022 at 12:05 he replied he would send evidence later as he was unable to access his room. He was working off shore and the trips could be short or long. He would find funds to pay for legal representations.
9. The Tribunal notified the Applicants and Mr Reay that it was not possible to contact all parties prior to 2pm, the representations would be considered but the case would call.

Case Management Discussion

10. Both Applicants, their representative Ms Elder and Mr Reay attended the CMD by telephone. Mr Reay was able to participate throughout. In light of the fact that Mr Reay clearly did not have a problem with the telephone attendance at the CMD the Tribunal proceeded with the CMD.
11. Ms Michelle Reay did not participate. The Tribunal was satisfied that she had received the necessary notice as confirmed by the Sheriff Officer's report.
12. The legal member explained the purpose of the CMD and advised Mr Reay of the limits of what the Tribunal could take into account.
13. Mr Reay explained that he had lost his job due to COVID at the start of the pandemic. He stated that he agreed the rent arrears as long as the deposit had been taken into account and that he had previously made various payment offers to the Applicants. He thought that he was only liable for 1/2 of the amount as this related to two tenants but after the legal member read out Clause 1 of the tenancy agreement, which explicitly states that the tenants are jointly and severally liable for all of the obligations of the tenant under the agreement which means that both are liable up to the full amount in relation to the landlord but between them would have then have a potential right of relief against the respective other joint tenant for payment of their share, he agreed that he understood this and agreed this was the case. He explained how hard he had been hit by losing his employment, that he was currently sofa surfing when back from work off shore and that he simply did not have the funds to pay the debt outright or in instalments that would clear the debt in 2 years. He had a small child he has to provide for and he finds the whole process embarrassing. He had a good job which he lost because of the pandemic and had never been in this situation before. He simply does not have the means to pay the outstanding arrears. The legal member explained that in terms of the Time to Pay directions the guidelines were that offers should clear the debt within 2 years. Mr Reay stated that this would just not be possible. He emphasised that he was not to blame for the situation and it was only due to Covid. He was specifically asked if there were any reasons why the amount may not be due but stated he just

could not pay and he strongly believed that neither the Applicants nor he should be disadvantaged by the Covid situation and the government should have assisted tenants and landlords in these circumstances.

14. Mrs Attah stated that an order was required as no amounts had been paid.
15. Ms Elder confirmed that Mr Reay had made offers of payment initially at the rate of £100 per month, then £130 per month and latterly at £150 per month but even the highest offer would take 4 years to clear the outstanding arrears. If the Tribunal was to issue an order then clearly it would be in the interest of her clients to negotiate payments with the Respondents but at least the Applicants would have the security of an order being in place. She stated she understood Mrs Reay was on benefits. She confirmed the outstanding amount at the sum applied for of £7,037.62.

Findings in Fact:

Based on the evidence lodged and the representations of the participants at the CMD the Tribunal makes the following findings in fact:

1. The property was let on a Private Residential Tenancy Agreement commencing on 24 July 2020.
2. The parties were the landlord and tenant of said Tenancy Agreement.
3. The joint tenants were jointly and severally liable for payment of rent under the agreement and are jointly and severally liable for payment of the remaining arrears.
4. The tenancy ended on 18 June 2021.
5. The monthly rent, payable in advance, was £1,550.
6. Rent arrears accrued as per the Rent Statement up to the end of the tenancy for the sum of £8,587.62.
7. After application of the deposit of £1,550 to the arrears the final outstanding arrears at the end of the tenancy were £7,037.62.
8. The amount remains outstanding at the date of the CMD.
9. The rent arrears arose because Mr Reay lost his employment due to the COVID pandemic.
10. He made 3 payment offers to the Applicants, the highest of which would have taken about 4 years to clear the arrears.
11. He is currently not in a position to offer payments which would clear the arrears in a period of up to two years.

Reasons for Decision:

1. The Tribunal considered that the material 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.

2. 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.

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

4. The Tribunal did not consider that there was any need for a hearing as there had been no representations from the Respondent Mrs Reay and arrears are not in dispute from Mr Reay. It was clear from the statement of Mr Reay exactly why the rent arrears arose and that he wished the matter to be resolved.

5. The Tribunal makes the decision on the basis of the documents lodged by the Applicants and their solicitor and the information given at the CMD by Mr Reay.

6. The first named Respondent had fair notice of the representations of the Applicants forming the reasons for the application and has not challenged these. As no representations were received from the first named Respondent by the Tribunal, the facts of the case are not disputed by her. The arrears are accepted by Mr Reay and he did not put forward anything that would amount to a defence in this application, although the Tribunal fully appreciates the reasons as to why the arrears arose and his preparedness but inability to pay these at present.

7. The Tribunal is thus satisfied that the Respondents had entered into a Private Residential Tenancy Agreement with the Applicants for the property for the dates stated and at a monthly rental of £1,550 as stated in clause 8. The Respondents are jointly and severally liable for the rent as stated in clause 1. The arrears arose due to the sudden unemployment of Mr Reay, for whom Covid appears to have been an extremely challenging situation. His previous payment offers were rejected

by the Applicants as it would have taken too long to clear the arrears. Mr Reay is currently not in a position to offer higher payments and acknowledges that the Applicants are due the funds. In those circumstances the Tribunal must grant a payment order as the reason for the lack of funds is not a matter it can take into account. This was explained to Mr Reay at the CMD. The Tribunal has every sympathy for tenants who were badly affected by the pandemic but lack of funds is not a matter the Tribunal can take into account with regard to a valid payment demand.

8. The Tribunal made it clear that if a payment order is granted, the enforcement of said order will be a matter for the parties and encourages Mr Reay to contact the Applicants through Ms Elder to make further arrangements. However, the Tribunal is not involved in that process and has no influence on that matter.

9. The Applicants are entitled to a payment order for the sum of £7,037.62 for the rent arrears for the rental due up to the end of the tenancy as claimed in the application for a payment order for rent arrears accrued under the tenancy agreement to that date. The parties are jointly and severally liable. The order must be granted.

10. Mr Reay is asked to provide a permanent address either in the UK or abroad to the Tribunal and the Applicant's representative as soon as this becomes available.

Decision:

The Tribunal grants the order for payment of the amount of £7,037.62 by the Respondents to the Applicants.

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.

Petra Hennig McFatridge

14 July 2022

Legal Member/Chair

Date