



**Decision with statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber)**

**Chamber Ref: FTS/HPC/CV/21/0839**

**Property : 53 Townhead Road, Coatbridge ML5 2HT ("Property")**

**Parties:**

**John Sexton, 13 Balfour Crescent, Hamilton ML3 9UH ("Applicant")**

**TC Young, Solicitors, 7 West George Street, Glasgow G2 1BA ("Applicant's Representative")**

**Peter Bennett, 53 Townhead Road, Coatbridge ML5 2HT ("Respondent")**

**Tribunal Members:**

**Joan Devine (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("Tribunal") determined that an order for payment should be made.**

**Background**

The Applicant sought an order for payment of £10,000 plus interest in respect of arrears of rent. The Applicant had lodged with the Tribunal Form F. The documents produced were a statement in respect of rent arrears and sheriff officer's execution of service certifying service of the Application on 25 May 2021.

A case management discussion ("CMD") took place on 28 June 2021. Both parties appeared. The Applicant was also represented. As there was a dispute between the Parties regarding whether the Respondent was obliged to pay rent for occupation of the Property a continued CMD was fixed for 11 August 2021. Again, both parties appeared and the Applicant was represented. In advance of the August CMD parties had lodged various documents in response to a Direction issued by the Tribunal. The documents lodged were considered and a detailed discussion took place at the August CMD as fully set out in the Note of the CMD which was issued to parties on 16 August 2021. One of the key documents considered was a Minute of Agreement

between the Respondent and Jayne Sexton and the Applicant's Father, John Sexton Snr dated 13 October 2011 ("the Minute of Agreement").

At the conclusion of the August CMD the Tribunal noted that the matters in agreement appeared to be :

1. The Minute of Agreement had been entered into. It had been fulfilled in part in that title to the Property was transferred to a nominee of John Sexton senior; the mortgage over the Property had been repaid and a nominee of Mr Sexton senior had granted a tenancy in favour of the Respondent and his wife for the Property at a rent of £300 per month.
2. A court action raised by the Applicant against the Respondent at Airdrie Sheriff Court had settled on 23 January 2017 on the basis the pursuer in the action (the Applicant) would lease the Property to the defender in the court action (the Respondent) from 1 February 2017 to 25 July 2022 at a rent of £500 per month.
3. The Respondent had paid rent at the rate of £500 per month from February 2017 to January 2020.

The Tribunal advised Parties that it was having difficulty identifying a defence to the claim for payment. The Tribunal was however mindful that the Respondent had arranged to obtain legal advice that week from Thompsons, Solicitors. In those circumstances the CMD was continued to 13 September 2021 allow the Respondent to obtain legal advice.

### **CMD on 13 September 2021**

On Friday 10 September 2021 the Respondent submitted a postponement request to the Tribunal on the basis his wife was unwell and was in hospital. On the morning of Monday 13 September 2021 the Respondent provided to the Tribunal a letter from University Hospital Monklands dated 9 September 2021. The letter stated that the patient had been discharged on 9 September 2021. Both parties appeared at the CMD. The Applicant was represented by Kirstie Donnelly of the Applicant's Representative. The Respondent was accompanied by his daughter Nicola Bennett as a supporter.

The Respondent sought a postponement of the CMD. He said that he was not in a fit state to deal with the CMD and had not had time to prepare for it. He said that he had consulted Thompsons, Solicitors but they were unable to take on his case due to its complexity. He said he had identified another solicitor, Raeside Chisholm, who

would take on his case. The Tribunal asked the Respondent if he had a letter from a doctor saying that he was not fit to attend the CMD. He said that he did not.

Ms Donnelly opposed the request for a postponement. She noted that this was the third CMD and the third time the Respondent had sought a postponement. She said that the Applicant was being prejudiced.

The Tribunal refused the request for a postponement.

The Tribunal referred the Respondent to the Note of the August CMD and to the matters noted as being agreed by the parties. The Tribunal reviewed each of those items with the Respondent and he confirmed that he agreed each statement was accurate. He said however that the Mr Sexton Snr had not complied with all of his obligations in terms of the Minute of Agreement. The Tribunal noted that it had been told at previous CMDs that there was no litigation ongoing in that regard. The Respondent said that counsel's opinion was being obtained and litigation was to be commenced. The Tribunal asked if court proceedings had been served, the Respondent said they had not.

The Respondent said that he was the subject of a fraud. He said that investigations were ongoing by Police Scotland. He said that he had made a complaint to the Lord Advocate and the Chief Constable. He said that the press were interested in his story. He said that if an order for payment was made that would result in "the victim compensating the criminal".

Ms Donnelly said that her motion was for payment of £10,000 plus interest at a rate to be determined by the Tribunal although she suggested 2% or 3%. She explained that the rent statement intimated on 6 August 2021 to both the Tribunal and the Respondent included the rent that fell due on 1 September and took the total claimed to £10,000. The Tribunal checked the rent statement and noted this was correct.

In response to a question from the Tribunal the Respondent confirmed that he continued to live in the Property and that he had paid rent of £500 per month from February 2017 to February 2020 and had paid nothing since that date.

### **Findings in Fact**

The Tribunal made the following findings in fact:

1. The Applicant and John Sexton Snr had entered into the Minute of Agreement.

2. The terms of the Minute of Agreement had been fulfilled in part in that title to the Property was transferred to a nominee of John Sexton Snr; the mortgage over the Property had been repaid and a nominee of Mr Sexton Snr had granted a tenancy in favour of the Respondent and his wife for the Property at a rent of £300 per month.
3. Title to the Property was held by the Applicant. The date of entry on the title sheet was 15 November 2011.
4. The Respondent had entered into a tenancy agreement for the Property with the Applicant dated 1 March 2012.
5. A Court action raised by the Applicant against the Respondent at Airdrie Sheriff Court had settled on 23 January 2017 on the basis the pursuer in the action (the Applicant) would lease the Property to the defender in the court action (the Respondent) from 1 February 2017 to 25 July 2022 at a rent of £500 per month.
6. The Respondent had paid rent for the Property at the rate of £500 per month from February 2017 to January 2020.
7. The Respondent continued to reside in the Property.
8. The Respondent had failed to make payment of the rent due for the period February 2020 to September 2021 which totalled £10,000.

### **Reasons for the Decision**

An agreement was reached between the Applicant and the Respondent in January 2017 in terms of which the Respondent would lease the Property from the Applicant for the period 1 February 2017 to 25 July 2022 at a rent of £500 per month. The Respondent agreed that this was the case. He also agreed that he had paid rent of £500 per month to the Applicant from February 2017 to January 2020. He sought to withhold payment of rent from February 2020 because of a dispute that existed between the Respondent and John Sexton Snr regarding implementation of the part of the Minute of Agreement which related to the transfer of title to one half of the Gartsherrie and Dixon Estates. The dispute between the Respondent and a third party was not a relevant defence to the claim for payment of rent made by the Applicant against the Respondent. No other defence was stated by the Respondent.

Rent was due in terms of the agreement between the Applicant and the Respondent for the period February 2020 to September 2021 had not been paid. The Tribunal determined to make an Order for payment of £10,000 plus interest at the

rate of 2% per annum in terms of Rule 41A of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("Regulations").

### **Decision**

The Tribunal grants an order for payment of £10,000 plus interest at the rate of 2% per annum from 13 September 2021 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.**

Joan Devine

Joan Devine  
Legal Member

Date : 13 September 2021