



**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/22/4355

Re: Property at 37 Barshaw Road, Penilee, Glasgow, G52 4EE (“the Property”)

Parties:

Mr Andrew O'Brien, 33 Cardonald Place Road, Glasgow, G52 3JP (“the Applicant”)

Ms Victoria McMahon, 37 Barshaw Road, Penilee, Glasgow, G52 4EE (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Angus Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order in the sum of Seven thousand and Forty-Three Pounds only (£7043.00) be made against the Respondent and in favour of the Applicant.

The decision of the Tribunal was unanimous.

Background

1. This application for a payment order was first lodged with the tribunal on 8th December 2022 along with an application for a related payment order application with reference FTS/ HPC/ CV/22/4355. The application for the payment order was accepted by the tribunal on 20th December 2022 and the application for the possession order was accepted on 19th of January 2023.

2. A Case management discussion was initially fixed for both applications for 24th March 2023 at 10:00 am.

Case Management Discussion 24th March 2023

3.The case management discussion was attended by the Applicant who represented himself and the Respondent who represented herself.

4.The Tribunal had sight of both applications, a tenancy agreement, Form AT6,an execution of service by Sheriff Officer of the Form AT6 together with rent arrears statement, a notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003, a breakdown of rent payments and rent arrears, redacted bank statements and an e-mail intimating the notice in terms of section 11 of the 2003 Act to Glasgow City Council.

5. On 22 February 2023 the Applicant submitted further documentation in the form of a further AT6 Form seeking a possession order under Ground 8A of the Housing (Scotland) Act 1988 in that it was suggested that the Respondent had accrued rent arrears under the tenancy where the cumulative amount of rent arrears equates to, or exceeds, an amount equivalent to 6 months' rent. He also lodged a Notice to Quit, execution of service of these documents on the Respondent by sheriff officer, letters sent by the Applicant to the Respondents outlining the level of rent arrears and signposting her to agencies which offer help and support, and e-mail correspondence between the Applicant, the Respondent and the Respondent's former partner on the issue of rent arrears.

6.The parties had entered into an assured tenancy at the property with effect from 1st June 2015 which had been for a period of six months, and this had continued on a monthly basis after the initial term of six months. Monthly rent payable in advance is £650 per month in terms of the agreement.

7.The Applicant set out his position as to why he was seeking a payment order. No rent had been paid in terms of a tenancy agreement between the parties since July 2022 and rent arrears were increasing. This was affecting his own financial situation; he was having to try to take on extra work and he had contacted the Respondent many times to try to deal with the rent arrears. He said the situation was affecting his mental health.

8.The Respondent was unsure of the position she wished to adopt regarding the orders being requested but did not dispute the level of rent arrears suggested to have accrued. She accepted no rent had been paid for some months and explained that she had been off sick from work but was now back working. She wanted time to consider her position and take advice. The Applicant was strongly opposed to such a continuation but after consideration the Tribunal determined that the case management discussion should be continued to allow the Respondent to take advice on her position. The Tribunal noted that she indicated at that time that some rent could be paid, and she agreed to make enquiries as to whether she could source any form of lump sum to pay towards the rent arrears.

Case Management Discussion 25th April 2023.

9.The Applicant had lodged additional representations on 2nd April 2023 and a response to the Direction on 19th April. These had been crossed over by the Tribunal to the Respondent.

10. At the case management discussion on 25th April 2023 the Applicant and Respondent attended and represented themselves. The Applicant was accompanied on the teleconference by his partner Ms Murchie.

11. The Respondent Ms McMahon indicated that she accepted the level of rent arrears said to be due which stood at £7043.

12. The Applicant had requested at this case management discussion to be permitted to increase the sum he was seeking by way of a payment order from the original amount sought of £4443 to £7043 to reflect the rent arrears now accrued. The Applicant accepted that he had not formally intimated that he was seeking to increase the sum being requested to the Respondent in terms of Rule 14A of the Tribunal Rules of procedure but said he had written to the Respondent regularly on the amount of rent arrears as they increased, and he said she was aware of the level these had reached.

13. The Respondent indicated that she was not opposing the request to increase the sum being requested in the application as she accepted the sum said to be due. In these circumstances the Tribunal allowed the sum being requested to be amended in terms of Rule 14A of the Tribunal rules.

14. The Applicant had made written submissions on when the arrears had accrued as the Tribunal had directed him to do this after the first case management discussion having raised the issue of prescription. The Applicant had confirmed that he had lodged a full rent statement for the entire tenancy to set out the full position as regards his application, but the rent arrears had accrued since June 2022, and he was not seeking rent which fell due before that month. The Respondent did not dispute this.

15. The Applicant Mr O'Brien indicated to the Tribunal that rent arrears now stood at £7043 and no rent had been paid for several months. He said that this was having a financial effect on him and his family. His work was not guaranteed, and the rent had helped to pay the bills. His partner was having to take on extra shifts at work and he had been trying to do extra hours and this was affecting his family life as he has two young children aged 9 and 11. He had a mortgage on his property and stayed in a 2-bedroom house with his family. There was currently no overtime at his work and the lack of rent payments was having an effect and he feared about how long he could sustain their financial position without any rent being paid. He had written updating the Respondent on the rent arrears every month and had asked to discuss matters with her in October 2022 at the same time as asking to inspect the house. In an email dated 4th November 2022 the Respondent's ex-partner had offered to take responsibility for all rent payments going forward and pay £250 per month to clear the arrears which stood at that time at £4493. The offer was to pay a total of £900 per month (including the monthly rent) from the start of December 2022 and based on the arrears at the time, the offer suggested the arrears would be cleared by May 2024. The Applicant had not accepted the offer querying why there was no lump sum which could be paid given that no rent had been paid at the time for four months. His position was that he had not refused the offer but had not found it reasonable in the circumstances.

16. Ms McMahon the Respondent advised that she had 4 children, twins aged 7, and two others aged 12 and 17. She has two children who have been diagnosed with autism and another with ADHD. She works in the NHS. Her income comprised of her wage of between £1400 - £1500 per month, child benefit of £50 per week, child maintenance of £300 per month and DLA (disability living allowance) which she received for one of her children in the sum of £300 per month. Her eldest son worked. She did not disclose her outgoings but implied these were significant. She said she understood the situation with non-payment of rent by her was causing issues for the Applicant but said that she too was struggling. When asked why she had not paid any rent between the first case management discussion and the second she said she had been advised to wait for eviction and pointed out that for private lets some were asking for three to four months' rent in advance and some people were she said, "chancing their luck". She said she had received assistance from a social worker and from an adviser at Shelter who had told her that the level of rent arrears she had meant that she would be regarded as intentionally homeless. She was asked if she wished to make any offer to the Applicant in relation to the rent arrears and she did not. She indicated that her ex-partner had tried to come to an agreement with the Applicant regarding the arrears, but the offer had been refused. She said that the parties had been able to communicate with each other earlier in the tenancy, but she felt that relations had now broken down because of the Applicant's behaviour. She did not suggest that the rent arrears were due to any delay or failure in the payment of a benefit.

17. The Respondent did not dispute the sums said to be due by her she raised the issue of how these could be paid by her as she indicated that she did not have this sum of money available. The Tribunal Legal member explained that she could apply for a Time to Pay Direction and the procedure for doing this was set out for her. The Tribunal legal member also explained that a Time to Pay Order could be applied for after any order was made and when steps had been taken to enforce it. The Respondent did not wish to apply for a time to pay Direction and indicated that she would consider seeking a Time to Pay Order at a later stage.

18. The Tribunal considered that it had sufficient information upon which to make a decision and considered that the proceedings had been fair.

Findings in Fact

19. The parties entered into an assured tenancy agreement at the property with effect from 1st June 2015.

20. The Respondent lives at the property with her 4 children whose ages range from 7- 17, three of whom have medical conditions.

21. The tenancy agreement ran for 6 months and at the end of the initial term continued on a month-to-month basis.

22. The monthly rent payable throughout the tenancy is £650 payable on the 1st of each month.

23.No rent has been paid in terms of the tenancy agreement since July of 2022.

24.Between July and February 2023 the Applicant sent several letters to the Respondent setting out the level of rent arrears accrued and signposting her to sources of assistance.

25.An offer to pay off the rent arrears in November 2022 as they then stood over a period of 18 months was not accepted by the Applicant who was seeking a lump sum payment towards the rent arrears in the first instance, and this was not offered.

26.The rent arrears due in terms of the tenancy as of 25th April 2023 have reached £7043 and this level of rent arrears is causing financial difficulty for the Applicant.

27.The sum of £7043 is lawfully due by the Respondent to the Applicant.

Reasons for Decision

28.The sums due by the Respondent to the Applicant by way of rent arrears were not in dispute. The Tribunal considered whether it was reasonable to grant a payment order when an offer to pay off the arrears had been made some months before but not accepted by the Applicant who had been looking to have the monies repaid sooner with a lump sum payment to start with which was not being offered. It was noted that at the time of the Tribunal proceedings no rent had been paid for some time and there was no further offer being made towards payment of the arrears at any point. The Tribunal took the view in these circumstances that it was reasonable to grant the order.

Decision

The Tribunal determined that a payment order in the sum of Seven thousand and Forty-Three Pounds only (£7043.00) be made against the Respondent and in favour of the Applicant.

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.

Legal Member/Chair _____ 25.4.23 _____
Date