



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) Act 2016 and Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).

Chamber Ref: FTS/HPC/CV/20/0275

Re: Property at First Floor Flat, 97 Adamswell Street, Glasgow, G21 4DD (“the Property”)

Parties:

Flemington & Co., c/o Flemington House, 110 Flemington Street, Glasgow, G21 4BF (“the Applicant”)

Mr Lukasz Borczek, sometime residing at First Floor Flat, 97 Adamswell Street, Glasgow, G21 4DD (“the Respondent”)

Tribunal Member:

Martin McAllister (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order be made against the Respondent for payment of the sum of FOUR THOUSAND SIX HUNDRED AND FIFTY POUNDS (£4,650) to the Applicant. The tribunal also made a time to pay direction under Section 1(1) of the Debtors (Scotland) Act 1987, in the following terms: The respondent is required to pay the sum of Four Hundred Pounds (£400) per month until the full amount has been paid. The first payment must be made no later than thirty days after intimation of the Order requiring payment.

Background

On 27th January 2020 the Applicant submitted an application to the First-tier Tribunal for Scotland seeking payment of the sum of £4,050 in respect of rent arrears.

On 5th March 2020 the Respondent submitted an application for a time to pay direction under the Debtors (Scotland) Act 1987.

A case management discussion was held on 13th July where the Applicant's solicitor indicated that he wanted to amend the sum sought to reflect additional arrears of rent. The Applicant's solicitor also confirmed that his client would accept a time to pay direction requiring the Respondent to make monthly payments of £400. Consideration of the application was continued to allow an updated rent statement to be submitted to the Tribunal.

A case management discussion was held on 25th August 2020. It was held by audio conferencing because of the current public health emergency.

Case Management Discussion

Mr Stephen Moffat, solicitor, represented the Applicant. The purpose of the case management discussion was set out by the Legal Member. There was no appearance by the Respondent but he had sent two emails to the Tribunal office on 23rd August 2020 in which he stated that he could not attend because he could not get time off his work. The email states "Otherwise I think that documents about pay my indebtedness flat is enough to close the case."

Mr Moffat confirmed that he had sent an updated rent statement to the Tribunal office. The terms of this were considered. It showed a balance due of £3,850 and showed that the last payment made by the Respondent was on 12th June 2020 and that it was for the sum of £100. The tribunal had before it the email which the Applicant's solicitor had sent when submitting the updated rent statement. This stated that the statement did not reflect that the rent for April, May, June and July was also not paid and that the balance due amounts to £4,650 and requested that the sum sought in the application be amended to that figure.

The tribunal noted that the updated rent statement and a copy of the Applicant's solicitor's email had been sent to the Respondent by the Tribunal and that these had been emailed to him on 16th July 2020.

Mr Moffat submitted that determination of the application could be concluded at the case management discussion and he invited the Tribunal to make an order for payment for the whole sum of £4,650. He submitted that the Respondent had had notice of the sum now claimed and he said that his clients believe that the Respondent had left the Property sometime in June 2019. He suggested that, if the Tribunal was not minded to grant an Order for £4,650 along with a corresponding time to pay direction, it make a time to pay order for £4,050 but still make the Order for the whole sum.

Findings in Fact

1. The parties entered into a short assured tenancy agreement in respect of the Property.
2. The tenancy agreement was dated 20th May and 11th June both 2014.

3. The tenancy commenced on 1st June 2014.
4. The monthly rent due under the private residential tenancy was £200.
5. The sum due and unpaid in respect of rent as at 25th August 2020 is £4,650.

Documents before Tribunal

1. Short Assured Tenancy agreement dated 20th May and 11th June both 2014.
2. Rent statement from 1st July 2014 to 10th January 2020 showing rent arrears of £4,050.
3. Rent statement from 1st July 2014 to 12th June 2020 showing rent arrears of £3,850.
4. Email from Applicant's solicitor to the Tribunal dated 15th July 2020.
5. Email from Tribunal to Respondent dated 16th July 2020.
6. Application form for time to pay direction dated 5th March 2020.

Reasons

The matter had been continued from the previous case management discussion to allow the Applicant to amend the sum comprising the claim. This had been done and that Tribunal had intimated this to the Respondent by email. The Tribunal was satisfied that the Respondent had had intimation of the case management discussion and that he also knew of the amendment sought. The application for amendment and the updated rent statement had been sent to the Respondent. The Respondent knew about the case management discussion and the Tribunal therefore considered that it could deal with the matter in his absence in terms of Rule 29.

The tribunal accepted the documentary evidence before it in relation to the existence of the tenancy and the arrears of rent. It accepted Mr Moffat's application to amend the sum of the claim to £4,650. It accepted the terms of the rent statement brought down to 12th June 2020 and the terms of his email regarding the additional four months of unpaid rent.

An issue for the tribunal was how to deal with the application for the time to pay direction. The Respondent, in his application, had accepted the debt at £4,050 and applied for an order requiring him to pay it at the rate of £400 per month. The sum sought was now £4,650 and the tribunal required to consider whether or not it would be appropriate to make a time to pay direction for £4,650. On balance, it considered that it could and that a further case management discussion or a Hearing was not necessary. The debt in respect of the rental arrears stated in the application had been accepted by the Respondent, he had had the opportunity of making representations when the proposed amendment had been intimated to him and the tribunal considered that it was reasonable for it to find that the Respondent had an expectation that the matter would be

determined on the basis of all the documentation which the tribunal had before it. His email to the Tribunal on 24th August 2020 contained the following “.....I think that documents about pay my indebtedness flat is enough to close the case.....”

The Applicant’s solicitor had confirmed that his client is prepared to consent to a time to pay direction requiring the Respondent to pay the sum of £400 per month.

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.

Martin McAllister

Martin J. McAllister, Legal Member.

25th August 2020