



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 and in terms of Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/CV/21/0454

Re: Property at 215 Union Grove, Aberdeen, AB10 6TE (“the Property”)

Parties:

Mr David Ross, A-511 Lamar Residence, Al Seel, Al Raha Beach, Abu Dhabi, United Arab Emirates (“the Applicant”) per his Agent, Mr. Forbes McLennan of James and George Collie LLP, 1 East Craibstone Street, Aberdeen, AB11 6YQ (“the Applicant’s Agent”)

Mr Gareth Thomas Forbes, residing at 4 Bunting Place, Chapelton, Stonehaven, AB39 8AN (“the First-named Respondent”) and Ms Solna Lucinda Pender, 4 Bunting Place, Chapelton, Stonehaven, AB39 8AN (“the Second-named Respondent”)

Tribunal Members:

Karen Moore (Legal Member)

Decision (in absence of both the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order for THREE THOUSAND HUNDRED AND THIRTY-SEVEN POUNDS AND TWENTY-TWO PENCE (£3,037.22) STERLING be granted against both Respondents and that, with regard to the First-named Respondent only, a time to pay direction under Section 1(1) of the Debtors (Scotland) Act 1987 is made in the following terms: the payments are to be made by fortnightly instalments of £1,000.00 and the first payment of £1,000.00 is to be made no later than 30 April 2021, the second payment of £1,000.00 is to be made no later than 15 May 2021 and the

final payment of £1,037.22 is to be made no later than 31 May 2021, all as set out in the First-named Respondent time to pay application.

Background

1. By application received on 26 February 2021 (“the Application”), the Applicant’s Agent made an application to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Chamber”) for a payment order for rent due arising from a private residential tenancy agreement between the Parties. The Application comprised an application form, copy private residential tenancy agreement showing a monthly rent of £1,500.00 and statements of rent due and paid showing rent amounting to £3,456.72 unpaid as at 16 December 2020 being the date of leaving, evidence that a tenancy deposit of £419.50 had been refunded to the Respondents and, therefore, showing a balance of rent arrears as £3,037.22.
2. On 15 March 2021, a legal member of the Chamber with delegated powers of the Chamber President accepted the Application and a Case Management Discussion (“CMD”) was fixed for 22 April 2021 at 14.00 by telephone conference call. The Application and the CMD were intimated to both Respondents by Sheriff Officer on 23 March 2021.
3. Immediately, prior to the CMD, the First-named Respondent submitted by email an application for time to pay direction under Section 1(1) of the Debtors Scotland (Act) 1987 (“the TTP application”) which TTP application was intimated to Applicant’s Agent on behalf of the Applicant who lodged an objection to the TTP application.
4. No application for a time to pay direction under Section 1(1) of the Debtors Scotland (Act) 1987 was made by the Second-named Respondent and no written representations were made by her or on her behalf.

CMD

5. The CMD took place on 22 April 2021 at 14.00 by telephone conference call. The Applicant was not present and was represented by Mr. McLennan, the Applicants’ Agents. Neither Respondent was present. When lodging the TTP application, the First-named Respondent advised the Tribunal that he was working overseas and might have a difficulty in accessing the CMD.
6. At the CMD, Mr. McLennan withdrew the objection to the TTP application.
7. Mr. McLennan confirmed that the sum sought remains due and owing by both Respondents.

Findings in Fact

8. From the Application and the CMD, the Tribunal found the following facts to be established: -
 - i) There was a private residential tenancy agreement between the Parties in respect of which the monthly rent was £1,550.00;
 - ii) The Respondents failed to pay rent due amounting to £3,456.72 to their date of leaving being 16 December 2020;
 - iii) The balance of a tenancy deposit of £419.50 fell to be deducted from the rent due;
 - iv) The Applicant applied the balance of this tenancy deposit to the rent due to and so the sum due by the Respondents to the Applicant is £3,037.22 and
 - v) In terms of the TTP Application, the First-named Respondent admits the sum due.

TTP Application

9. In terms of Section 5(2) of Debtors Scotland (Act) 1987, the Tribunal had regard to Section 5(2A) of that Act and to the information in both the Application and the TTP Application.
 10. The Tribunal noted that:-
 - (a) the nature of and reasons for the debt is former tenant rent arrears which have ceased to accrue;
 - (b) the Applicant via the Applicant's Agent had allowed the First-named Respondent time to pay, had encouraged payment in a courteous manner and had sign-posted the First-named Respondent to agencies which might assist him;
 - (c) in the TTP and covering email, the First-named Respondent, although not in employment, has commenced work overseas on an ad hoc or freelance basis and indicates his earnings to be in the region of £4,000.00 per month. He states that his family will offer additional support. He states that his outgoings are £2,462.00;
 - (d) although the First-named Respondent reneged on previous commitments to pay the sum due, he is now in an improved financial position with family support and so it is reasonable to expect him to pay the debt on the basis offered by him and
 - (e) no objection is offered by the Applicant.

11. Accordingly, the Tribunal, being satisfied of that it is reasonable in all the circumstances to do so, grants the TTP application.

Decision and Reasons for Decision

12. Having found at the CMD that rent amounting to £3,269.33 is due and owing by the Respondents to the Applicants and having regard to Rule 17(4) of the Rules which states that the Tribunal “may do anything at a case management discussionincluding making a decision” , the Tribunal proceeded to make an order for payment in this sum against both Respondents and to make a time to pay order in respect of the First-named Respondent, only, in the following terms: the payments are to be made by fortnightly instalments of £1,000.00 and the first payment of £1,000.00 is to be made no later than 30 April 2021, the second payment of £1,000.00 is to be made no later than 15 May 2021 and the final payment of £1,037.22 is to be made no later than 31 May 2021, all as set out in the TTP application.

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.

Karen Moore

Legal Member/Chair

22 April 2021
Date