



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/21/0532

Re: Property at 45 Queens Crescent, Aberdeen, AB15 4AZ (“the Property”)

Parties:

Silverwood Partners LLP, Silverwood, Dalmunzie Road, Beilside, Aberdeen, AB15 9EB (“the Applicant”)

Ms Eden Lee, 45 Queens Crescent, Aberdeen, AB15 4AZ (“the First Respondent”)

Mr Martin Vivian-Crowder, 45 Queens Crescent, Aberdeen, AB15 4AZ (“the Second Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that 1) an order for payment in the sum of £9910 should be granted against both Respondents; and 2) an order for payment in the sum of £2400 should be granted against the Second Respondent, with interest on both orders in the sum of 4% per annum above the Bank of Scotland base rate.

1. This is an application made on 9th March 2021 in terms of Rule 70 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”). Parties entered into a short assured tenancy in respect of the Property which commenced on 19th August 2016 with a monthly rent of £1650. The rent was increased to £1750 in June 2019. The Respondents fell into rent arrears. At the time of making the application the rent arrears were £10560 and the Applicant was seeking a late payment charge of £420. The total sum sought was £10980, with interest thereon. The Applicant’s representative lodged a copy of the tenancy agreement, copy correspondence and rent statement.

2. By email dated 13th April 2021, the Applicant's representative applied to amend the sum sought, informing the Tribunal of a payment of £4000 made by the Respondents in March 2021.
3. By letter dated 13th April 2021, the Respondents lodged written representations and a Time to Pay Direction ("TTPD") application proposing instalment payments of £800 per month. No details of income or expenditure were submitted on behalf of the First Respondent.
4. On 27th April 2021, the Applicant's representative submitted a response to the TTPD application, opposing the application.
5. A Case Management Discussion ("CMD") took place by telephone conference on 29th April 2021. The Second Respondent admitted liability for the arrears including an increase in rent in the sum of £100 per month from June 2019. The First Respondent argued that she was no longer a tenant as the tenancy agreement had been replaced following the aforementioned agreement to increase. It was clear that the tenancy agreement had not been replaced, therefore the First Respondent continued to be a tenant. The CMD was continued to allow the Applicant's solicitor to take instructions on matters relating to whether or not the First Respondent was liable for the increased rent from June 2019, given her argument that she was not party to the agreement to increase the rent and that she did not authorise the Second Respondent to act as her agent, and to allow the First Respondent to take legal advice on her position. Following discussion, the Second Respondent moved to amend the monthly payments proposed under the TTPD application to £600. There was agreement that, if the TTPD was to be granted, instalments should be paid on a weekly basis.
6. By emails dated 11th and 18th May 2021, the Applicant's representative made written representations and provided notification of an intention to make an application to amend the sum sought if no further rental payments were made by the date of the next CMD on 24th May 2021.

Case Management Discussion

7. A Case Management Discussion ("CMD") took place by telephone conference on 24th May 2021. The Applicant was not in attendance and was represented by Mr Aaron Doran, Solicitor. The First Respondent was unwell and unable to be in attendance. The Second Respondent was in attendance. The Second Respondent confirmed he was representing the First Respondent.
8. The Second Respondent confirmed that the First Respondent had not been able to obtain legal advice on her position, despite attempts to do so. Neither had she any further representations to make.
9. Mr Doran referred to his emails of 11th and 18th May 2021, explaining that, although the Applicant has written evidence that the First Respondent was aware of the rent increase from June 2019, they did not wish to run this

argument and would be content with two orders for payment, the first against both Respondents for payment of the outstanding rent and late payment charges at a monthly rental of £1650, ignoring the increase in rent from June 2019, and the second against the Second Respondent for payment of the difference in rent from June 2019 to date.

10. Mr Doran confirmed that he was making an application to amend at the CMD, given that no further payment had been received from the Respondents since March 2021. The outstanding sums were now £9910 in respect of the first order craved, this being made up of £9410 in outstanding rent and £500 in late payment charges. In respect of the second order craved, the outstanding sum was now £2300, this being made up of the £100 increase in rent from June 2019. Mr Doran moved the Tribunal to exercise its discretion in terms of Rule 16A(a) to shorten the time for complying with the time limit in Rule 14A, as notice had been given of intention to move this amendment.
11. The Second Respondent said he had no objection to the proposals made on behalf of the Applicant, namely the granting of two orders and the increase in the sum sought. He accepted the sums sought were due.
12. The Tribunal agreed to exercise its discretion in terms of Rule 16A(a) and shortened the period allowed for complying with the time limit in Rule 14A.
13. Responding to questions from the Tribunal as to why no further payments had been made since the last CMD on 29th April 2021, the Second Respondent said he is paid fortnightly and there had been unforeseen issues at work, so that his timesheet was not approved and he did not receive his pay on 14th May 2021. He would receive it on 28th May 2021 and would make payment then. Asked by the Tribunal how he would have dealt with matters if a Time to Pay Application had been made at the last CMD, he said he would have borrowed money from family to make the payments. He said his work had been erratic recently. He was satisfied matters had now settled down and he did not foresee the same problems arising again.

Time to Pay Direction Application

14. The Second Respondent confirmed he continued to move for a TTP Direction to be made in the sum of £600 per month, to be paid in weekly instalments.
15. Mr Doran said the Applicant continues to oppose the TTP Direction application. There have been historic promises to make payment which have come to nothing, and excuses are regularly made by the Respondents. Furthermore, the First Respondent has not provided any income and expenditure details. She clearly has income if she can afford to have a car on hire purchase. The Respondents have not been candid about their income and expenditure.

Findings in Fact

16.

- i. Parties entered into a short assured tenancy agreement in respect of the Property that commenced on 19th August 2016 at an agreed rent of £1600 per month.
- ii. In or around June 2019, the Second Respondent and the Applicant agreed an increase in rent to £1750 per month,
- iii. Rent lawfully due in terms of the tenancy was not paid by the Respondents.
- iv. The Applicant is entitled to recover rent lawfully due.
- v. The tenancy agreement provides for late payment charges on overdue rental payments.
- vi. The Applicant is entitled to recover late payment charges in respect of overdue rental payments.

Reasons for Decision

17. Rent lawfully due is outstanding and the Applicant is entitled to recover the rent. The tenancy agreement provides at clause 2.2 ii) that late payment charges will be charged. The tenancy agreement provides at clause 2.2 i) that 4% interest above the Bank of Scotland interest rate will be charged.
18. The Tribunal considered sections 1 and 1(1A) of the Debtors (Scotland) Act 1987 and considered that it would not be reasonable in all the circumstances to grant a Time to Pay Direction, given 1) the erratic nature of the Second Respondent's employment and payment; 2) the fact that no payments have been made since March 2021, which does not inspire confidence in the Respondents' ability or intention to make instalment payments; and 3) the allegation of a history of past failed repayment agreements, which was unchallenged by the Second Respondent.

Decision

19. An order for payment in the sum of £9910 is granted against both Respondents; and an order for payment in the sum of £2400 is granted against the Second Respondent, with interest on both orders in the sum of 4% per annum above the Bank of Scotland base rate.

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.

H.F.

Legal Member/Chair

24th May 2021
Date