



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/22/0692

Re: Property at 9 Connor Court, Girvan, KA26 9DR (“the Property”)

Parties:

Mr Christopher Barnes, 12 Corton Lea, Ayr, KA26 6GJ (“the Applicant”)

Mr William Martin, Mrs Suzie Martin, 9 Connor Court, Girvan, KA26 9DR (“the Respondents”)

Tribunal Members:

Richard Mill (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order be granted against the Respondents for payment to the Applicant in the sum of Eight Thousand Eight Hundred and Thirty Pounds (£8,830)

The order is subject to a time to pay direction under Section 1(1) of the Debtors (Scotland) Act 1987 which requires the respondents to pay the full amount by lump sum within three months from intimation of this Order

Introduction

This civil proceedings application is under rule 70 and section 16 of the Housing (Scotland) Act 2014. An order for payment is sought to recover alleged rent arrears.

The hearing

Following earlier sundry procedure the hearing took place remotely by video (Webex) on 27 March 2023 at 10.00am.

The applicant was present and represented by Ms Jennifer Grosvenor of Messrs Harper Macleod Solicitors. The respondents were present and represented by Mr Gerard Tierney of Ayr Housing Aid Centre. The respondent's daughter Miss Karen Martin was also present.

It was submitted on behalf of the respondents that the sum sought, following amendment, in the sum of £8,830, was no longer the subject of dispute. It was agreed by both parties representatives that a payment order in this sum should be made against the respondents, subject to a time to pay direction requiring payment within three months.

An opportunity was allowed for the respondent's representative to complete a formal written time to pay direction application. This was thereafter received and the applicant's representative then confirmed by email that there was no objection to that application.

Findings and reasons

The property is 9 Connor Court, Girvan KA26 9DR.

The applicant is Mr Christopher Barnes who is the heritable proprietor and registered landlord of the property. The respondents are Mr William Martin and Mrs Suzanne Martin who are the tenants.

No formal written lease was entered into between the parties. There is a historical family relationship between them. The respondents have occupied the property since in or about September 2011. The tribunal was satisfied that an assured tenancy has been created and subsists under the Housing (Scotland) Act 1988. This is a matter of agreement between the parties.

The applicant seeks to recover the shortfall of rent received following the increase in rent which took effect from 25 September 2020. A detailed rent account has been produced. The tribunal found this unchallenged documentary evidence credible and reliable and attached weight to it. The sum outstanding as at the date of the hearing is £8,830. This is accepted by the respondents. It was agreed by both parties representatives that a payment order be made for this sum.

An application for a time to pay direction was made by the respondents. They sought a period of three months to pay the sum to be awarded. They rely upon state benefits but have been advised that an underpayment in their benefits from around August 2020 will be paid to them in a lump sum within the next three months. They anticipate that this will amount to around £10,000. The tribunal was satisfied on the basis of the

information available that the respondents will likely be able to make the relevant payment to satisfy the payment order and their undertaking to do so within a three month period is reasonable. The applicant's representative confirmed in writing that the offer was not opposed.

The applicant's representative made an application for expenses under Rule 40. This requires the tribunal to establish that the respondents have through unreasonable behaviour in the conduct of the case put the applicant to unnecessary or unreasonable expense.

The respondents have been represented by Mr Tierney, an experienced welfare rights officer. The respondents have followed all of his advice since instruction in June 2023. A suggestion that the respondents have acted unreasonably is by inference a suggestion that Mr Tierney has acted unreasonably which is not a position which the tribunal accept. In any event the respondents would not be responsible for Mr Tierney's failings.

The respondents are both vulnerable persons with health problems which impact upon their ability to effectively deal with their administrative affairs. Such is the nature of their health that Mr Tierney was concerned for some time that neither may have capacity to instruct. This is not the fault of the respondents. Their health problems were evidenced by the manner in which they participated in the hearing but also from the unchallenged documentary medical evidence lodged.

A letter dated 18 August 2022 by Dr Kenneth Brooksbank certifies that since 2001 Mr Martin, has had significant persisting anxiety and depression with agoraphobia and has been essentially housebound since then. He had urinary sepsis in 2020 and subsequently had discitis in June 2020 confirmed by MRI with cord compression at this level for which he had fusion fixation of his spine at this area. This has had a significant impact on his mobility and pain and he has ongoing issues relating to infection. He is a type 2 diabetic. He is certified to be on multiple daily medications.

By way of letter dated 12 August 2022, Dr Gareth Powell certifies on soul and conscience that Mrs Susan Martin, suffers from epilepsy and also from anxiety and depression. She is on three different medications for epilepsy and two for her anxiety and depression. Unfortunately due to recent stress she is struggling with her mental health and this has also had an impact on her seizure frequency. Her GP certifies that her attendance at a tribunal would have a significant adverse effect on both her physical and mental health.

The factual matrix of the lease arrangement between the parties is a complex one which is well documented. The late acceptance of a lease arrangement and in turn the existence of arrears of rent is due to the reasonable need for the respondents' representative to make full and diligent enquiries on their behalf. They were perfectly entitled to oppose the proceedings and put forward a prima facie defence which was earlier noted. The respondents did not ultimately seek to advance unnecessary

evidence and meritless arguments. They ultimately accepted the sums were due and that a payment order should be made. Whilst standard rules of procedure and directions were not followed by the respondents the tribunal is satisfied that this is primarily due to the respondents health issues.

The tribunal refused the application for expenses made on behalf 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.



28 March 2023

Legal Member/Chair

Date