



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

Chamber Ref: FTS/HPC/CV/22/1892

Re: Property at Flat 2, 45 Sidney Street, Saltcoats, KA21 5DB (“the Property”)

Parties:

Mr Edward McArdle, 10 Heatherhouse Road, Irvine, KA12 8HQ (“the Applicant”)

Ms Heather Mansfield, Flat 2, 45 Sidney Street, Saltcoats, KA21 5DB; Ms Elaine Orchard, 32 Caracol Avenue, Saltcoats, KA21 6AD (“the Respondents”)

Tribunal Members:

Valerie Bremner (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order be made against both Respondents in the sum of Five Thousand Two Hundred and Twenty-Five Pounds Only (£5225.00) with interest at the rate of 3 per cent per annum from the date of the decision until payment, this order being made against the First Respondent as tenant in terms of a tenancy agreement between the parties and against the Second Respondent as guarantor for all sums due in terms of the tenancy agreement including all rent payments due in terms of the tenancy agreement.

1.This application for payment order in terms of Rule 111 of the Tribunal Rules of Procedure was first lodged with the Tribunal on 16 June 2022 and accepted by the Tribunal on 1st July 2022.A case management discussion was set down for 7th October at 2pm.

2.The Applicant did not attend the case management discussion but was represented by Mr Gordon of Thorntons solicitors. There was no appearance by or on behalf of the Respondents. Mr Gordon requested that the Tribunal proceed in their absence. He was able to advise that he had received an email from the second Respondent, the guarantor in terms of the tenancy agreement, that morning,

advising that neither of the Respondents would not attend the conference call in the afternoon of 7th October 2022 and that the second Respondent would offer £50 per week towards rent arrears with effect from 28th October 2022 as a loan they had was paid off by that date.

3. In addition to this information, the Tribunal noted that the application and supporting papers had been served on both Respondents by recorded delivery and in the email sent to the Applicant's solicitor it was clear that the Respondents were aware of the case management discussion. The Tribunal considered it was appropriate to proceed in their absence as they had received fair notice of the application and date of the case management discussion.

4. On 7th October 2022 Tribunal had sight of the application, a tenancy agreement which was not signed by either Respondent, a paper apart, track and trace documents, a rent statement, an updated rent statement. further representations with an amended statement of claim, and letters regarding rent arrears, together with a request to increase the sum being requested by way of a payment order to £5100 as no further rent had been paid since the application had been made.

5. The Tribunal legal member considered the request to amend the sum being requested and after discussion allowed the sum being requested to be amended to £5100, noting that this had been intimated to the Respondents albeit less than 14 days before the case management discussion, but before the Second Respondent made her offer to pay £50 per week towards the arrears, an email which did not seek to challenge the level of rent arrears accrued at that stage.

6. At the request of the Tribunal legal member on 7th October 2022 Mr Gordon sent to the Tribunal the email received by him from the Second Respondent during the case management discussion. This email set out various health issues suffered by the First Respondent, and it was known to the Applicant that the Second Respondent dealt with matters on her behalf. Mr Gordon had not had the opportunity to take instructions on the offer from his client due to the timing of the email.

7. The Tribunal legal member felt it was appropriate in terms of the overriding objective that the Respondents have the opportunity to have the offer made the Second Respondent and guarantor concerning the rent arrears considered by the Applicant and that the Applicant's solicitor have the opportunity to take instructions on the matter and the case management discussion was continued on this basis.

8. The case management discussion was continued until 16th December 2022 at 10am. The Applicant attended and was again represented by Mr Gordon Solicitor. The Respondents did not attend, and the Tribunal had received no written representations or contact from them at all. The date of the case management discussion had been intimated to them by post and the Tribunal was satisfied that it was appropriate to proceed in their absence as they had received fair notice of the date.

9. Since the first case management discussion the Applicant's solicitor had lodged a signed copy of the tenancy agreement, a paper apart giving updated information and a request to increase the sum being requested to £5525. This request had been intimated to the Respondents via the email used for communication in terms of the tenancy agreement. In the circumstances the Tribunal legal member considered that it was appropriate in terms of Rule 14A of the Tribunal rules of procedure to allow the increase in the sum being requested to £5525.

10. The Applicant had entered into a tenancy agreement at the property with the First Respondent on 5th June 2021. The Second Respondent signed the tenancy agreement to act as a guarantor for all rent payments, other obligations, and other payments due by the First Respondent, her daughter, the tenant in terms of the tenancy agreement.

11. Mr Gordon was able to advise that since the last case management discussion on 7th October 2022, 6 payments of £50 had been made towards the rent arrears and this amounted to £300 towards the total arrears. The rent for November and December 2022 had been paid. The rent arrears now stood at £5225 with monthly rent of £425 still payable in terms of the tenancy agreement. This was the sum the Applicant was now seeking by way of a payment order.

12. Mr Gordon was seeking an open payment order against both Respondents. Whilst the Applicant was prepared to accept payments towards the arrears as had been made recently, the arrears are substantial, and the Applicant did not have confidence that the arrears would continue to be paid. Rent payments had initially been made by BACs from the account of the second Respondent but had simply stopped in October 2021. Attempts to clarify the position regarding the rent and letters setting out the arrears had had met with silence. Efforts the Applicant had been made to establish whether the rent could be paid by housing benefit had yielded no information. It was impossible for the Applicant to assess the first or second Respondent's financial position and the second Respondent as guarantor and being the person who dealt with communication regarding the tenancy, had not responded to his attempts to clarify the position. He had a mortgage to pay on the property and was having to take money from elsewhere to subsidise the mortgage due to the non-payment of rent for over a year. Mr Gordon pointed out that the Tribunal could not make a Time to Pay Direction given that the Respondents had not engaged at all with the Tribunal to request this and their financial circumstances were unknown. He also pointed out that the repayments offered and made towards the rent arrears if continued would clear the rent arrears in a period in excess of two years.

13. Mr Gordon requested interest on any payment order made at the rate of 8% per annum. This was not a rate of interest contained within the tenancy agreement and the Tribunal cannot award the judicial rate of interest, but Mr Gordon submitted that this rate seemed appropriate and further submitted that the Tribunal could use its discretion to award a rate of interest as it saw fit.

14. The tribunal was satisfied had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

15. The Applicant entered into a private residential tenancy agreement at the property from 5th June 2021 with the First Respondent Heather Mansfield.

16. The agreement was also signed by the second Respondent Elaine Orchard as guarantor for all sums due under the agreement including all payments of rent due.

17.The monthly rent payable in terms of the ongoing tenancy at the property is £425.

18.No rent was paid in terms of the tenancy agreement from October 2021 until October 2022.

19.Efforts by the Applicant to engage with the Second Respondent who deals with all matters regarding the tenancy were met with silence.

20.The Second Respondent and Guarantor contacted the Applicant's solicitor in October 2022 offering to pay £50 per week towards the rent arrears from 28th October 2022.

21.Six payments of £50 toward the rent arrears have been paid to the Applicant since the offer was made by the Second Respondent.

22.The Rent arrears as at the case management discussion on 18th December 2022 stand at £5225.

23.The Applicant has no confidence that payments towards the rent arrears will be maintained and even if they were it would take over 2 years to clear the rent arrears at their current level.

24.The sum of £5225 is lawfully due to the Applicant by the First Respondent as tenant at the property in terms of an ongoing tenancy agreement and by the Second Respondent as guarantor for all rent payments due in terms of the tenancy agreement.

Reasons for Decision

25.The Tribunal was satisfied it was appropriate to make a payment order against both Respondents. Neither of the Respondents had engaged with the Tribunal at any stage and it was only after rent had not been paid for a year that the Second Respondent and guarantor had made contact with the Applicant's solicitor to offer to make payments toward the arrears. Given the failure to engage with the Applicant over a year period when no rent was being paid, the Applicant has no confidence that payments towards the arrears will continue and even if they did it would take over 2 years to pay off the sum currently due. It appeared reasonable to grant a payment order and the Tribunal noted that it was open to both Respondents to seek a Time to Pay Direction if they wished after the Tribunal decision was issued.

26.The Tribunal granted a payment order with interest at the rate of 3 per cent per year to reflect the "use" value of the monies at the current time.

Decision

The Tribunal granted a payment order against both Respondents in the sum of Five Thousand Two Hundred and Twenty-Five Pounds Only (£5225.00) with interest at the rate of 3 per cent per annum from the date of the decision until payment, this order being made against the First Respondent as tenant in terms of a tenancy agreement between the parties and against the Second Respondent as guarantor for all sums due in terms of the tenancy agreement including all rent payments due in terms of the tenancy agreement.

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.

Valerie Bremner

Legal Member/Chair

16.12.22

Date