



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/22/1894

Re: Property at Flat 4, 24 Park Circus, Glasgow, G3 6AP (“the Property”)

Parties:

Mr William Liam Donnelly, WM Donnelly Ltd, 15 Law Place, East Kilbride, G74 4QL (“the Applicant”)

Miss Nasiba Ali, Flat 4, 24 Park Circus, Glasgow, G3 6AP (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Elaine Munroe (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the Respondent to the Applicant in the sum of £25500.00.

Background

1. By application dated 16 June 2022 the Applicant’s representatives Ritehome Limited, Glasgow, applied to the Tribunal for an order for payment by the Respondent to the Applicant in respect of alleged rent arrears arising from the Respondent’s tenancy of the property. The Applicant’s representatives submitted a copy of the tenancy agreement, pre-action letters and rent statements in support of the application.
2. By Notice of Acceptance dated 16 September 2022 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.
3. Intimation of the CMD was given to the Respondent by Sheriff Officers on 7 November 2022.

4. By email dated 14 November 2022 the Applicant's representatives sought to amend the sum claimed to £25500.00
5. The Respondent submitted an application for a Time to Pay Direction dated 28 November 2022.
6. By response dated 7 December 2022 the Applicant's representatives submitted objections to the Respondents application for a Time to Pay Direction.

The Case Management Discussion

7. A CMD was held by teleconference on 8 December 2022. The Applicant did not attend but was represented by Mr Robert Nixon from the Applicant's representatives. The Respondent attended in person.
8. It was agreed that the parties entered into a Private Residential Tenancy agreement in respect of the property that commenced on 1 May 2020 at a rent of £2500.00 per calendar month. It was also agreed that the Respondent had fallen into arrears of rent in March 2021 and that the sum claimed by the Applicant of £25500 was due by the Respondent. With no payments at all having been made since 9 June 2022.
9. The Tribunal noted from the Respondent's application for a Time to Pay Direction ("TTPD") that in addition to savings of £12500.00 the Respondent had investments of £28000.00. the Tribunal queried why the Respondent could not realise her investments and use the funds to clear the debt due to the Applicant. The Respondent explained she had invested the funds in a friend's business and that since asking her to give her back her money she could no longer get hold of her. She hoped that the investment had not completely disappeared but it was not available now. The Respondent went on to say that her savings consisted of about £5000.00 or £6000.00 in her bank account and the rest was in gold that she had received for her marriage. The Respondent was asked why she had not sold the gold to reduce her debt and she explained that following her separation from her husband, he had claimed it should be returned to him. She said this was being disputed because of the funds he had taken from her and the dispute was still to be settled by their Imam. The Respondent explained that her relationship with her husband had been bad and she had been subjected to his controlling behaviour. This had resulted in him using her money for things he saw as a priority and that had led to the rent not being paid. She said that he had said the money would be paid back but it had never happened. She said she had separated in September and she was just now finding herself again.
10. The Tribunal noted that the Respondent had net earnings of £6730.00 per month and queried if this was roughly her income every month. The Respondent confirmed it was and had been over the period when rent had not been paid other than when she had been off sick with Covid when it had been less but that she had always had some income.

11. The Applicant's representative advised the Tribunal that notwithstanding the Respondent's explanation as to how the debt had occurred his instructions were to oppose the application for a TTPD.
12. The Respondent indicated that she would be prepared to increase the monthly amount to £3500.00. The Applicant's representative confirmed that this was still not acceptable to the Applicant. The Tribunal noted that the Respondent's outgoings amounted to £5020.00 per month leaving a surplus of £1710.00 per month and queried how she would be able to afford the additional £1800.00 required to meet the proposed monthly figure in the TTPD. The Respondent explained she intended to cut back on her other outgoings and that her family would help to pay her utility bills and food. The Tribunal asked if the Respondent had discussed this with her family and was advised that she had not spoken in depth with them as they were still coming to terms with the issues in her marriage but she was confident they would assist.

Findings in Fact

13. The parties entered into a Private Residential Tenancy Agreement that commenced on 1 May 2020 at a rent of £2500.00 per calendar month.
14. As at 1 November 2022 the Respondent owed the Applicant rent amounting to £25500.00.
15. The Respondent has paid no rent since June 2022.
16. Prior to June 2022 the Respondent made irregular payments of rent from April 2021.
17. The Respondent has cash savings of between £5000.00 and £6000.00.
18. The Respondent has other assets which she cannot currently realise.
19. After payment of her rent and other regular outgoings the Respondent has surplus income of about £1700.00 per month.

Reasons for Decision

20. The parties were in agreement as to the sum claimed by the Applicant as at 1 November 2022. The Applicant was therefore entitled to an order for payment in that amended sum. The issue for the Tribunal was whether it would be reasonable in the circumstances to grant the TTPD. This was opposed by Mr Nixon on behalf of the Applicant as he had suggested the Respondent could pay off the debt using her savings and investments. The Tribunal however accepted that it seemed unlikely that the Respondent's investment in her friend's business would be recoverable any time in the near future if at all and there was an issue with regards to the Respondent's gold that still required to be determined by her Imam. Nevertheless, the Tribunal was concerned to note that despite the Respondent apparently having significant earnings throughout

the past months no rent was being paid even after the Respondent had separated from her husband who she had blamed for the debt previously arising. The Tribunal was surprised that the Respondent was not prepared to use her savings to reduce the debt in advance of the CMD or offer to pay it to reduce the debt at the CMD. Furthermore, the Respondent's offer and the amended offer to pay £3500.00 per month in terms of a TTPD was wholly dependent upon her receiving very substantial support of additional funding from her family. At the date of the CMD the Respondent had not actually discussed how much support her family would provide. The Tribunal therefore could not be certain that the Respondent was in a position to meet the offer she was making. That being the case the Tribunal determined to refuse the application for a TTPD and granted an order for payment by the Respondent to the Applicant in the sum of £25500.00.

Decision

21. The Tribunal having carefully considered the written representations together with the oral submissions and being satisfied that it had sufficient information before it to make a decision without the need for a hearing finds the Applicant entitled to an order for payment by the Respondent in the sum of £25500.00 and refuses the Respondent's application for a Time to Pay direction.

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.

Graham Harding

**Graham Harding
Legal Member/Chair**

**8 December 2022
Date**