



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/22/2946

Re: Property at 90 Trinity Avenue, Cardonald, Glasgow, G52 3ER (“the Property”)

Parties:

Miss Catherine Sloan, Calle Rafael Alberti 4, San Miguel do Salinas, 03193 Alicante, Spain (“the Applicant”)

Ms Gillian Fay, 90 Trinity Avenue, Cardonald, Glasgow, G52 3ER (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment against the Respondent in favour of the Applicant in the sum of THREE THOUSAND SEVEN HUNDRED AND NINETY TWO POUNDS AND NINETY FOUR POUNDS (£3792.94) STERLING and made a time to pay direction under Section 1(1) of the Debtors (Scotland) Act 1987. The order for payment will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.

Background

1. This is an application dated 14 August 2022 for an order for payment of rent arrears under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The application was accompanied by a rent statement from 23 April 2019 to 26 July 2022 and bank statements. The Applicant explained she was unable to produce the tenancy agreement as it had been lost in a flood at her home in Spain.
3. On 17 October 2022 the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 1 December 2022 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 22 December 2022. The Tribunal also advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 16 January 2023. This paperwork was served on the Respondent by Sheriff Officers on 7 December 2022 and the Executions of Service was received by the Tribunal administration.
5. The Respondent lodged an application for a Time to Pay Direction on 13 December 2022 admitting the arrears and offering to clear these at £100 per month. The Applicant opposed the application on 5 January 2023.

Case Management Discussion

6. The Tribunal proceeded with a CMD on 16 January 2023 by way of teleconference. Both parties appeared on their own behalf. The case was heard together with a case for repossession of the Property under reference FTS/HPC/EV/22/2945.
7. The Tribunal had before it the rent statement to 26 July 2022 together with bank statements. The Tribunal considered these documents.
8. Miss Sloan advised that from the beginning of the tenancy on 23 April 2019 she was aware Ms Fay was dependent on benefits. Although the tenancy agreement had been destroyed, she explained that it was a standard Private Residential Tenancy. The rent was agreed at £600 per month. The arrears had accrued immediately from the start of the tenancy as no benefit was paid until August 2019. With reference to the rent statement lodged Miss Sloan confirmed that by the time the first benefit payment was made arrears were £2650. The Universal Credit housing payment was paid from August 2019, albeit that there was a slight shortfall in the amount paid. She explained that the Respondent promised to bring the arrears up to date and to set up standing orders, but that these promises were never sustained.
9. The Tribunal took Miss Sloan through the rent statement and the bank statement lodged and identified that Ms Fay had made personal payments of £150 on 23 November 2020, £100 on 3 and 23 February 2021, £75 on 7

March 2022 and £200 on 28 June 2022. She also explained that Ms Fay had made a further payment of £78 in August 2022. Universal Credit Housing Payment of £522.30 had been received in September 2022 and since October 2022 Universal Credit Housing Payment of £600.17 had been received. Current arrears had increased to £4392.94 which was about £24 less than the arrears were when she lodged the application when arrears stood at £4416.05.

10. In response to questions from the Tribunal, Miss Sloan agreed that £600 of the £4416.05 did not relate to rent arrears, but to a deposit that she alleges was never paid by the Respondent. She conceded that this £600 should be deducted from the figure for rent arrears.
11. She explained she was increasingly frustrated by the situation. She had discussed the arrears with Ms Fay on numerous occasions and about how much she could afford to pay towards the arrears. Miss Sloan encouraged Ms Fay to get help and she was aware that Ms Fay had spoken to someone. At one point Ms Fay offered to pay her £500 in order to prevent eviction, but nothing was received and she explained she had serious concerns as to whether Ms Fay could actually afford to pay the £100 per month she offered.
12. Miss Sloan explained she found it very stressful not knowing from one month to the next as to whether she would be paid rent. She was aware the Respondent was pregnant and worried about whether the Respondent would be able to pay even £100 per month after the birth. Ms Fay had a daughter aged about 20-21 and whom Miss Sloan would have thought would contribute to the household income to help out with the rent. She went on to explain that although the rent from 21 October 2022 was being covered she was still having to use credit cards to pay for the expenses at the Property such as repairs, annual servicing and buildings insurance.
13. On being further questioned by the Tribunal Miss Sloan advised that with reference to the rent statement she had received £250 at the beginning of the tenancy. Ms Fay had told her just to put that money towards the rent at the beginning of the tenancy. Miss Sloan confirmed she had always received payments direct from Universal Credit. She explained that although the arrears had been accruing over the last 4 years she had wanted to give the Respondent an opportunity to pay. When she had got to the stage she thought about action, the COVID pandemic had arrived and she knew that evictions were not allowed. She had tried to work with Ms Fay. She was not aware that she could have raised an action for the recovery of arrears alone and only became aware of that when she started to look into raising the current actions for arrears and for eviction. She explained that had the arrears been cleared she felt that she could have worked with the Respondent. However, the whole thing was affecting her now. She explained she owned another four rental properties, but this one was the only one where a tenant

was in receipt of benefits. She was not experiencing any particular hardship, and was able to cover what she needed to pay as she had a full time job.

14. In response Ms Fay accepted she was in arrears of £4392.94. However she claimed that she had given the full deposit to Miss Sloan's partner and £100 was returned to enable her to buy paint. Ms Fay questioned whether the arrears figure should be reduced by the amount of the £600 deposit. The Tribunal referred her to her application for a Time to Pay Direction of £100 per month. She advised she was a part time shop assistant and earned about £608 per month. She received £437 per month Universal Credit. Off that she had outgoings; she paid about £80 per week for gas/electricity, £100 per week for food for the household, £15 per month for her phone and £20 per month for broadband. Her daughter was also on Universal Credit and tried to help out with the household expense when she could.
15. Ms Fay accepted the tenancy started on 23 April 2019 and that the monthly rent was £600. When questioned about why there was no rental payments at the beginning of the tenancy she explained she was working part time at that time. She had applied for Universal Credit Housing Payment. She stated she had got herself into a bit of a mess and that she never had the money to pay the rent. She candidly stated that it was her fault and that she should have paid more attention to the rental situation but that the rent had always been paid direct to the Applicant. When questioned by the Tribunal as to whether she should have received Universal Credit Housing Payment to cover the first four months of the tenancy from April to July 2019 she stated she had moved into the property direct from another private rented property. As far as she was aware the Universal Credit Housing Payment should have been paid direct to the Applicant immediately. When questioned further as to whether any backdate was due to cover those first four months of the tenancy she stated that no-one had ever mentioned that she may be entitled to a backdate, but she had never asked.
16. She stated that her Universal Credit Housing Payment did change from time to time depending on how much she earned and that she had personally made the payments identified by Miss Sloan. She went onto explain that she was due to go off on maternity leave in about 6 weeks' time and would receive maternity pay and Universal Credit. She felt she would still be able to pay the arrears off and when questioned by the Tribunal advised she could make the first payment on 23 January 2023.
17. Ms Fay was questioned further about the rental deposit paid at the beginning of the tenancy. She re-iterated she had paid £600 to the applicant's partner, with £100 returned, but had not received a receipt for that or notification from any of the tenancy deposit schemes about the deposit. She confirmed that she had moved straight from a previous private rented property to this one, and that she was aware of the tenancy deposit schemes. She was aware that there would be a lead in time for her housing payments to be sorted out at the beginning of the tenancy, but was not aware there were arrears after

Universal Credit Housing Payment had started until the Applicant had raised it with her. She explained she had spoken to the Department of Work and Pensions and they said they would sort out her Universal Credit Housing Payment but they never did. She had not taken specific advice to help her with this, but accepted on reflection she should have done so.

18. She explained that her Universal Credit statement showed how much was paid to the Applicant every month and accepted that she did not do anything about meeting the shortfall as she had got herself into a bit of a mess, despite the Applicant sending her messages about the arrears.
19. On being questioned about the amount of the arrears Miss Sloan stated that she had not been aware that Ms Fay had paid £600 to her partner. She had advised that the £100 Ms Fay had mentioned had been deducted from the rent due for April as shown on the rent statement. However, she advised that if the Tribunal were minded to grant a payment Order in her favour she would be willing to have the arrears figure reduced by £600 to £3792.94. That figure was accepted by the Respondent.

Findings in Fact

20. The Applicant and the Respondent agreed by way of a Private Residential Tenancy Agreement commencing 23 April 2019 in relation to the Property that the Respondent would pay the Applicant a monthly rent of £600.
21. The Respondent applied for Universal Credit Housing Payment at the commencement of the tenancy. The first payment from Universal Credit was made to the Applicant of £596.64 on 23 August 2019. By that time the Respondent was in arrears of £2650. The Respondent paid only £250 personally towards the rent between 23 April 2019- 23 August 2019.
22. The Respondent has been in receipt of Universal Credit Housing Payment at varying amounts from August 2019 depending on the number of hours she works and wages received. The Respondent is currently in receipt of £600.17 per month Universal Credit Housing Payment and has been since October 2022. The sum of £600.17 is being paid direct to the Applicant.
23. The Respondent made personal payments of £150 on 23 November 2020, £100 on 3 and 23 February 2021, £75 on 7 March 2022, £200 on 28 June 2022 and £78 in August 2022 towards the rent.
24. The Respondent has fallen into arrears of rent. Arrears to 16 January 2023 are £3792.94.

Reasons for Decision

25. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the submissions made by the Applicant and by the Respondent.
26. The Tribunal noted that parties were in agreement with regard to the material facts with regards to the tenancy agreement, the rent, payments made to rent and the amount of the arrears. The Applicant had produced evidence of persistent non- payment of full rent with reference to the rent statement and bank statements lodged. The Respondent admitted the arrears and did not oppose the Application, having lodged an application for a Time to Pay Direction of £100 per month. The Tribunal was satisfied on the basis of the documents, together with parties' submissions that the order for payment in favour of the Applicant be granted.
27. The Applicant was receiving Universal Credit Housing Payment of £600.17. Arrears would not increase. The Tribunal noted that the Respondent stated she could make the first payment of £100 towards arrears on 23 January 2023. The Tribunal was therefore satisfied that in terms of Section 1 of the Debtors (Scotland) Act 1987 that it was reasonable for the Respondent's application for a Time to Pay Direction to be granted.

Decision

28. The Tribunal granted an order for payment of £3792.94 with a Time to Pay Direction for payment of £100 per month with the Respondent required to make the first payment of £100 by no later than 23 January 2023. The decision of the Tribunal was unanimous.

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.

Shirley Evans

16 January 2023

Legal Chair

Date