



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/20/2463

Re: Property at 13 1F Rutland Square, Edinburgh, EH1 2BB (“the Property”)

Parties:

PMR Investments Limited, Company, 7 Hopetoun Crescent, Edinburgh, EH7 4AY (“the Applicant”)

Mr Walter Ross, 13 1F Rutland Square, Edinburgh, EH1 2BB (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

This is an application for a payment order dated 24th November 2020 and brought in terms of Rule 70 (Application for civil proceedings in relation to an assured tenancy under the 1988 Act) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant originally sought payment of arrears in rental payments of £16,000.00 in relation to the Property from the Respondent, and provided with its application copies of a short assured tenancy agreement and a rent arrears statement.

The short assured tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 4th February 2021, and the Tribunal was provided with the execution of service.

By e-mail dated 17th February 2021, the Applicant amended the sum sought in this application to £19,000.00, which was the sum then outstanding in rent arrears, and noted that if a further rental payment falling due on 20th February 2021 was not paid, then the sum outstanding as at the date of the Case Management Discussion would be £21,000.00.

By letter to the Tribunal dated 20th February 2021, the Respondent provided his response to the application, in which he candidly admitted most of the rent arrears were due subject to certain explanations.

A Case Management Discussion was held at 14.00 on 5th March 2021 by Tele-Conference. The Applicant's Mr Milne participated, and the Applicant was represented by Miss Gibson, letting agent. The Respondent participated, and was not represented.

Miss Gibson advised the Tribunal that the rental due on the 20th February 2021 had not been paid, and that the current level of arrears was £21,000.00.

The Respondent confirmed that he fully accepted the rent arrears figure provided as at today's date, subject to one adjustment. He explained that as a result of the coronavirus pandemic, his previously significant income derived from working in the travel industry sector had completely ceased. He explained the background fully in his letter of 20th February 2021, and that until lockdown provisions were eased, he would not resume making any income.

The Respondent had explained his situation to the Applicant's letting agent, and the Applicant had agreed to a reduction of £4,500.00 on the sum that he owed. Accordingly, the figure of rent arrears sought should be adjusted to reflect that reduction.

Miss Gibson explained that the Applicant had agreed to such a reduction, but that the reduction was subject to the Respondent agreeing a repayment schedule. He had not done so, and accordingly the proposed reduction did not apply.

Mr Milne indicated to the Tribunal that in the circumstances, if the Respondent accepted the current level of arrears and a payment order was to be granted by the Tribunal, the Applicant would apply the previous reduction offered and restrict the sum sought to £16,500.00.

The Respondent accepted Mr Milne's offer and confirmed to the Tribunal that he was content for an order to be made against him for payment of the sum of £16,500.00, but indicated that he was unable to pay this amount as one lump sum and sought time to pay.

The Tribunal explained the procedure involved in making an application for a time to pay direction, and the Respondent indicated that he wished a continuation for the purpose of allowing him to submit such an application.

Miss Gibson and Mr Milne confirmed that they had no objection to this application being adjourned to allow the Respondent to submit an application for a time to pay direction.

The Respondent confirmed to the Tribunal that he could complete and return the application form to the Tribunal by close of business on Friday 12th March 2021.

The Tribunal agreed to issue a Direction to the Respondent to return the completed application form by close of business on Friday 12th March 2021, and to continue this matter to a Hearing on the application for a time to pay direction.

Rule 28 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended allows the Tribunal discretion on its own initiative, or on an application by a party, to adjourn a Case Management Discussion.

The Tribunal considered that in these circumstances it would be appropriate to continue this application to a Hearing, to allow the Respondent the opportunity to submit an application for a time to pay direction.

The Respondent subsequently submitted a time to pay application, and the Applicant submitted its response to that.

A Hearing was held at 10.00 on 12th April 2021 by Tele-Conference. The Applicant's Mr Milne again participated, and the Applicant was again represented by Miss Gibson, letting agent. The Respondent again participated, and was not represented.

The Respondent confirmed that his offer to pay £400.00 per month was all that he could afford towards both the rent arrears sought, and in respect of his ongoing monthly rent.

The Respondent explained that he fell into the category of small business who were unable to claim coronavirus support, and that he was living off loans provided from a long-term business colleague on an informal month to month basis. He believed that he was not eligible to claim benefits due to the financial support he was receiving.

Sadly, the Respondent advised that his long-term business colleague had suffered serious ill-health, and as a result, the financial support he provided to the Respondent would likely end.

The Respondent appreciated that his situation would have to change. He advised that he would have to give up the tenancy of the Property, and would most likely be sequestered. He invited the Tribunal to continue the Hearing in order to allow him to clarify his own financial and business employment position going forward.

Mr Milne and Miss Gibson did not oppose the Respondent's request, and after a brief adjournment to discuss matters, the Tribunal agreed to continue the Hearing for one further occasion to allow the Respondent to clarify his position going forward.

The parties and the Applicant's representative received oral intimation of the date, time and place of the next Case Management Discussion set for 10.00 on 18th May 2021 before adjournment of the proceedings on 12th April 2021.

Continued Hearing

A continued Hearing was held at 10.00 on 18th May 2021 by Tele-Conference. The Applicant's Mr Milne again participated, and the Applicant was again represented by Miss Gibson, letting agent. The Respondent did not participate, and was not represented.

In view of the history of this matter, and the previous attendances by the Respondent, the Tribunal clerk at the Tribunal's request attempted to contact the Respondent by telephone to advise him of the continued Hearing, but received no reply.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

Mr Milne and Miss Gibson advised with reference to the papers that they sought an order for payment of the amended outstanding sum sought of £19,000 from the Respondent. They advised that the Respondent was still residing at the Property, and that they like the Tribunal had received no further communications from the Respondent since the Hearing of 12th April 2021.

Statement of Reasons

Section 16 of the *Housing (Scotland) Act 2014* provides as follows:

"16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3)Part 1 of schedule 1 makes minor and consequential amendments.”

Accordingly, the Tribunal has jurisdiction in relation to claims by a landlord (such as the Applicant) for payment of unpaid rental against a tenant (such as the Respondent) under a short assured tenancy such as this.

The Tribunal considered the terms of the short assured tenancy agreement, the updated rent arrears statement, and the Applicant’s submissions, and was satisfied that this disclosed that the sum sought of £19,000 was due by the Respondent to the Applicant in respect of rent arrears. Indeed, the Respondent did not dispute the rent arrears in making his application for a time to pay direction.

In circumstances where the Respondent did not appear at the continued Hearing, and did not provide the further information which he had stated at the earlier Hearing he would provide to the Tribunal, the Tribunal dismissed his application for a time to pay direction.

In any event, the Respondent had sought a direction that the rent arrears be paid by monthly instalments of £400.00. It would take 4 years at that level of payment to repay the arrears. However, as he would be paying nothing toward ongoing rental payments, in reality the direction sought would result in his rent arrears increasing by £1,600.00 per month, which would plainly not be reasonable.

Accordingly, the Tribunal shall make an order for payment of the sum sought of £19,000.00 with no time to pay direction.

Decision

In these circumstances, the Tribunal will make an order for payment by the Respondent to the Applicant of the sum of £19,000.00.

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.

Neil Kinnear

18th May 2021

Legal Member/Chair

Date