



**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/21/1546

Re: Property at Flat 4, 367 Argyle Street, Glasgow, G2 8LT (“the Property”)

Parties:

Mr Mehmet Ali Yurtseven, Flat 4, 367 Argyle Street, Glasgow, G2 8LT (“the Applicant”)

Miss Kirsty Williams otherwise Kirsty Grant, formerly residing at Flat 4, 367 Argyle Street, Glasgow, G2 8LT; Mr Martin Curry, Flat 2, Room 3, 171 Kyle Street, Glasgow G4 0DS (“the Respondents”)

Tribunal Members:

Sarah O'Neill (Legal Member) and Janine Green (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment by the respondents of the sum of £7355 should be granted in favour of the applicant.

Background

1. An application was received on 28 June 2021 from the applicant’s solicitor for a payment order brought in terms of rule 111 (Application for civil proceedings in relation to a private residential tenancy) of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”).
2. The applicant was seeking payment of rent arrears of £6570 from the respondents in relation to the property, being the amount of arrears as at the date the application form was submitted. Attached to the application form were:
 - i. Paper apart setting out further details of the application

- ii. Copy private residential tenancy agreement between the parties dated 24 July 2020
 - iii. Copy notices to leave to each of the respondents dated 16 March 2021, together with certificates of service
 - iv. Copy pre-action protocol letters to both respondents dated 14 June 2020, together with proof of service by recorded delivery.
 - v. Rent statement showing the outstanding rent arrears to be £6570 as at the end of May 2021
3. Following correspondence from the tribunal administration, an amended application form was received from the applicant's solicitor on 29 July 2021. Attached to the form were the same documents that had been attached to the original application form, together with a copy of a non-resolution certificate from SDS Resolution. An amended rent statement showing the rent arrears due as at the end of June 2021 to be £7355 was received from the applicant's solicitor on 12 August 2021. That sum was sought by the applicant in his amended application.
4. The amended application was accepted for determination on 11 August 2021. A case management discussion (CMD) was arranged for 22 September 2021. This was later cancelled as the respondents had left the property, and the tribunal was unable to serve the papers for the CMD on them by sheriff officer. A further CMD was arranged for 20 October 2021. The respondents were cited to attend the CMD by advertisement dated 15 September 2021 in terms of rule 6A of the 2017 rules. On 15 September 2021, the tribunal issued a direction to the applicant requesting further information. A response was received from the applicant's solicitor on 4 October 2021

The initial CMD

5. A case management discussion (CMD) was held by remote teleconference call on 20 October 2021. Miss Siobhan Brown, trainee solicitor of Clarity Simplicity Limited, represented the applicant on the teleconference call. The respondents were not present and were not represented. The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a CMD had been duly complied with. It therefore proceeded with the CMD in the absence of the respondents.
6. Miss Brown confirmed that the applicant sought an order for the sum of £7355 being the amount of rent arrears owed by the respondents as at 27 July 2021, the date they vacated the property.
7. The tribunal noted that the tenancy agreement between the parties dated 24 July 2020 stated at clause 11 that a deposit of £800 was to be paid by the

respondents. Miss Brown confirmed that no tenancy deposit had in fact been received by the applicant from the respondents. There was therefore no deduction to be made from the sum due in respect of any tenancy deposit.

8. The tribunal noted that it appeared from email correspondence from the respondents that they had now separated. An application for a time to pay direction had been received from Miss Williams on 8 October 2021. This had not initially been sent to the applicant due to concerns about the readability/formatting of it. The tribunal considered however that the application could be read and understood, although much of the text had been input using the 'comment' function. The application had therefore been sent to Miss Brown the day before the CMD.
9. A time to pay application had also been received from Mr Curry on 8 October 2021, but this had been received in a format which the tribunal was unable to accept. The tribunal administration had written to him on 10 October 2021, asking him to resubmit the application in a different format, but no further response had been received from him.
10. The tribunal noted that given that they had both indicated that they wished to apply for time to pay, both respondents appeared to admit that the sum claimed was due. The tribunal was unable, however, to make a decision on whether a time to pay direction should be granted as it had not yet received a time to pay application from Mr Curry in an appropriate format. Both respondents had submitted a time to pay application by the required date. Given that Mr Curry had attempted to submit a time to pay application by the deadline, the tribunal considered that he should be given a further opportunity to submit this again.
11. The tribunal also noted that the applicant had not been afforded a reasonable period of time to consider the time to pay application received from Miss Williams. Miss Brown indicated that she did have instructions from the applicant that he was not willing to accept the application made by Miss Williams. He had significant financial commitments to fulfill and noted that at the rate of £40 per month proposed by Miss Williams, it would take more than 15 years to pay off the outstanding sum. Miss Brown indicated that the applicant would be looking for repayments of at least £150 per month to be made towards the debt in order to agree to a time to pay application.
12. The tribunal noted that, although they are no longer together, the respondents are jointly and severally liable for the debt owed. It wished to give both respondents the opportunity to apply for a time to pay direction, as any time to pay direction granted would apply to both of them. The tribunal would then

need to consider whether it was satisfied that it was reasonable in all the circumstances, including the reasonableness of any refusal or objection by the applicant to the time to pay proposal made, to grant an order subject to a time to pay direction.

13. It therefore decided to postpone the CMD to a later date, in order to allow:

- i. Mr Curry to resubmit his time to pay application;
- ii. the applicant time to set out his written response to Miss Williams' time to pay application, and to any application received from Mr Curry;
- iii. the tribunal time to consider the applications and any response received from the applicant.

14. The tribunal issued a further direction to the parties in relation to the above points. A response was received from the applicant on 9 November 2021. A time to pay application was received from Mr Curry on 12 November 2021, asking to pay the sum due at the rate of £40 per month.

The postponed CMD

15. The postponed case management discussion (CMD) was held by remote teleconference call on 16 November 2021. The applicant was present and represented himself. The respondents were not present and were not represented.

16. The tribunal noted that both respondents had been sent notification of the CMD by email on 20 October 2021, and that Miss Williams had replied to the email that same day. Mr Curry had also submitted a time to pay application after that date. The tribunal was therefore satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a CMD had been duly complied with. The tribunal delayed the start of the CMD by 10 minutes, in case the respondents had been detained. They did not appear, however, and no telephone calls, messages or emails had been received from them. The tribunal therefore proceeded with the CMD in the absence of the respondents.

17. The tribunal noted that both respondents had admitted that the sum sought was due. The tribunal was therefore in a position to grant an order for the sum sought. The only issues to be considered by the tribunal were therefore: 1) whether to grant a time to pay direction as requested by the respondents and 2) whether to grant interest on the sum due, as requested by the applicant.

18. The applicant asked the tribunal to refuse the applications for a time to pay direction made by the respondents. He noted that it would take between 7 and

8 years for the debt to be repaid at the rate of £80 per month (i.e. £40 per month from each respondent). He said that his solicitor had advised him not to accept less than £150 per month from each respondent. He had tried to help the respondents with claiming benefits etc. and had agreed not to take a deposit from them at the start of their tenancy. He told the tribunal that he had his own financial difficulties. He said that the respondents had been in rent arrears since September 2020, and he had eventually lost patience with them.

19. They had told him they had lost their jobs due to the covid-19 situation. He believed that they had then obtained other jobs but had continued not to pay the rent. He said that he had tried to discuss a repayment plan on several occasions before raising a tribunal application, but that the respondents had not been in contact with him about this. They had agreed through his solicitor to start a repayment plan, but they had not stuck to this, and had refused to move out when he had served a notice to leave on them.

20. The applicant also asked the tribunal to award interest on the sum due at the judicial interest rate of 8%. There was no provision for interest in the tenancy agreement, but Miss Brown had indicated at the first CMD that the applicant sought interest in terms of the tribunal's discretion under rule section 41A of the 2017 rules. He had repeated this claim in his written representations received on 9 November 2021.

Findings in fact

21. The tribunal made the following findings in fact:

- There was a private residential tenancy in place between the parties, which commenced on 24 July 2020.
- The respondents left the property on or around 27 July 2021.
- The rent due under the tenancy agreement was £785 per calendar month, payable in advance on the 24th of each month.
- The respondents had paid the rent during the first two months of their tenancy in July and August 2020 and had paid nothing since that time, aside from one payment of £495 in November 2020.
- As at 27 July 2021, the respondents owed the applicant the sum of £7355 in rental payments.
- Both respondents admitted that they jointly owed the applicant the sum of £7355.

Reasons for Decision

22. In considering whether to grant a time to pay direction as requested by the respondents, the tribunal considered whether it was reasonable in all the circumstances to do so, in terms of section 1 of the Debtors (Scotland) Act 1987 ('the 1987 Act'). In doing so, the tribunal had regard in particular to the following matters, as set out in section 1A of the 1987 Act:

- (a) The nature of and reasons for the debt in relation to which the order was granted;
- (b) Any action taken by the creditor to assist the debtor in paying that debt;
- (c) The debtor's financial position;
- (d) The reasonableness of any proposal by the debtor to pay that debt;
- (e) The reasonableness of any refusal of, or any objection by the creditor to, any proposal by the debtor to pay the debt.

23. The tribunal noted that both respondents appeared to be currently in receipt of universal credit, and that their application forms suggested that they both had monthly outgoings which exceeded their monthly income. The respondents therefore both appeared to be in a difficult financial position currently. The tribunal also noted that it would take the respondents between 7 and 8 years to pay off the amount due at the rate proposed. The applicant had argued that these were not therefore reasonable proposals and had rejected them.

24. The tribunal noted that the applicant did appear to have taken steps to assist the respondents to pay the debt and had tried to resolve matters before applying to the tribunal. His solicitor had sent them pre-action requirement letters on 14 June 2021. A non-resolution certificate from SDS Resolution, the resolution service operated by SafeDeposits Scotland, had also been submitted by the applicant's solicitor with the amended application. This stated that the dispute between the parties had been the subject of an attempted resolution service conducted between 3 February and 12 June 2021; that SDS Resolution had attempted to contact the respondents following the applicant's application to the service; and that no resolution could be reached on the matter of rent arrears.

25. Having taken all of these issues into account, the tribunal determined that in all the circumstances it was not reasonable to grant a time to pay direction in the terms proposed by the respondents. While the tribunal noted that the applicant's preference appeared to be for a time to pay direction for an increased sum of £300 (i.e. £150 from each respondent), it was unable to grant this, as it could only grant either an order subject to the time to pay

direction requested by the respondents, or an order for the full amount. It therefore decided to grant an order in favour of the applicant for the full amount claimed.

26. The tribunal explained to the applicant that once he was in possession of the order, he would be in a position to take enforcement action against the respondents for the full amount due, and that the tribunal would have no further role in the matter.

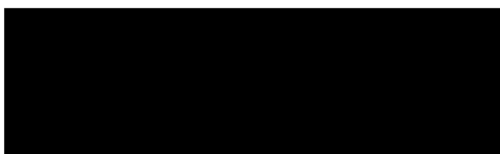
27. Regarding the applicant's claim for interest on the sum claimed, the tribunal noted that, while Miss Brown had indicated that the applicant wished to seek interest in her written submissions for the initial CMD, there had been no claim for interest in the amended application form dated 29 July 2021. The tribunal declined to grant interest on the sum awarded as it did not consider that the respondents had been given fair notice of this claim.

Decision

The tribunal grants an order for payment by the respondents to the applicant for the sum of £7355.

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.



Legal Member/Chair

**__16 November 2021_
Date**