



**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/20/0770

Re: Property at 12A Woodburn Road, Woodburn, EH22 2AT (“the Property”)

Parties:

Mr Waqas Malik, 5 Keppock Crescent, Prestonpans, EH32 9FN (“the Applicant”)

Ms Lesley Gibson, 12A Woodburn Road, Woodburn, EH22 2AT (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order for the amount of £5,433.82 by the Respondent to the Applicant should be granted.

1. The Case Management Discussion (CMD) took place on 6 November 2020 by telephone call. Taking part were Mr Gardiner, solicitor on behalf of Huma Malik and Waqas Malik, Catriona Smith for Huma Malik and Lesley Gibson, the Respondent.
2. The application history is set out in the CMD notes of 13 August 2020 and 29 September 2020. These are referred to for their terms and held to be incorporated herein.
3. The application for an order for payment of rent arrears in terms of Rule 70 of the First -tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 as amended (the Procedural Rules) is dated 28 February 2020 and had been made on 5 March 2020 by email to the Tribunal by Catriona Smith as representative of Mrs Huma Malik. At the CMD on 29 September 2020 it had become clear that the Applicant may not be correctly identified and that the property may have changed hands prior to the application having been made.

4. On 22 October 2020 Mr Waqas Malik wrote to the Tribunal advising he had purchased the property on 26 November 2019 and should now be the Applicant..
5. On 30 October 2020 Mr Gardiner of Lindsays Solicitors wrote to the Tribunal advising he was instructed by Mr Waqas Malik and Mrs Huma Malik. He made detailed written submissions regarding the substitution of the Applicant and the material considerations of the case. The correspondence from Mr Gardiner and the attachments to his submissions are referred to for their terms and held to be incorporated herein.
6. The Applicant's representative made a formal application in terms of Rule 13 of the Procedural Rules to amend the sum sought to £6,773.
7. On behalf of Mrs Malik and Mr Malik he made an application in terms of Rule 32 (1) (a) and (3) of the Procedure Rules to substitute Mr Waqas Malik for the original Applicant Mrs Huma Malik.
8. On 5 November 2020 the Tribunal received a copy of a formal assignation of all demands due to the original Applicant to Mr Waqas Malik dated 3 November 2020 together with cover letter and proof of service of said documentation on the Respondent signed for on 5 November 2020.
9. The supporting documents lodged with the application and during the course of the case process are referred to for their terms and held to be incorporated herein, so are the CMD notes and the Direction issued on 29 October 2020.
10. The Tribunal first dealt with the matter of substitution of the Applicant. Ms Gibson, the Respondent, confirmed that she accepted that the property had been sold by the original Applicant Mrs Huma Malik to Mr Waqas Malik on 26 November 2019 as shown in the email from Mr Ivan Ralph of 22 October 2020 (document 4 of the bundle lodged on 30 October 2020. She had advised the Tribunal at the last CMD on 29 September 2020 that it was her understanding that the property had changed hands. For that reason she had stated at the previous CMD she was not sure who the funds would be due to. She had no opposition to the change in Applicant given the sale of the property to Mr Waqas Malik.
11. The Tribunal thus in terms of Rule 32 (1) (b) of the Procedure Rules allowed the amendment of the application to replace the original Applicant Mrs Huma Malik with the correct Applicant Mr Waqas Malik as it was satisfied that this correctly reflected the position in regard to the property and the lease.
12. Mr Gardiner further set out the Applicant's position regarding the application as stated in the submissions of 30 October 2020.
13. Ms Gibson challenged the submissions in so far as they related to the sum of rent arrears, reminding the Applicant's solicitor that at the CMD on 29 September 2020 the then parties had agreed that the sum of rent arrears outstanding at 1 September 2020 was £4,433.82. Ms Smith had taken part in that CMD and confirmed that this had been agreed but also referred to some IT issued she had at that time. Mr Gardiner on behalf of Mr Waqas Malik advised the Tribunal that if a figure had been agreed at the last CMD he would not challenge that agreement and would accept the sum of £4,433.82 as the amount due on 29 September 2020. Both he and Ms Gibson stated that nothing had been paid since and that thus a further £1,000 representing rent due on 1 October 2020 and 1 November 2020 of £500 per month as stated in clause 1.10 of the tenancy agreement of 1 January 2017 would be added to the agreed sum, bringing the sum of arrears to £5,433.82 as of the date of the CMD.

14. Ms Gibson agreed that no payments had been made at all since the last payment on 29 January 2020 and that some arrears had been in place since the commencement of the lease.
15. Ms Gibson confirmed she had received the assignation document. She took no issue with the Applicant's representations that in terms of the Assignation document served on her the now Applicant would be entitled to payment of any outstanding arrears and that the rent, going forward, would have to be paid to him.
16. Ms Gibson further advised that she was currently not working and was awaiting an operation. After that has taken place she would be willing and able to clear the arrears. However, she is currently not in a position to afford the rent for the property and to make payments towards any rent arrears.
17. She reminded the Tribunal that the matter had now been pending since March 2020 and that her position regarding arrears was getting worse every month. She is in receipt of Universal Credit. She stated she had been in limbo since the application had been made and would wish to have the matter dealt with sooner rather than later as further time would only make the rent arrears position worse. She currently had no solution to the increase in the arrears each month.
18. Mr Gardiner for Mr Waqas Malik stated that he would consider it likely that his client would be flexible in accepting reasonable proposals for repayment of the outstanding sums once the Respondent was in a position to make such a proposal and the Legal Member advised the Respondent of the options to seek time to pay arrangements under the Debtor (Scotland) Act 1987, however, the Respondent was not in a position to apply for a time to pay direction at the date of the CMD and stated she would apply for a time to pay order once her employment situation had improved.

Findings in Fact:

1. The property is let on a Short Assured Tenancy, which commenced on 1 January 2017 between the Respondent and Scotbet Ltd.
2. The owner of the property was Huma Malik, the original Applicant, until the property was sold to Mr Waqas Malik on 26 November 2019. The current owner of the property is the Applicant Mr Waqas Malik.
3. Mrs Huma Malik had entered into a commercial lease with Scotbet Ltd, which was renounced by Scotbet Ltd on 1 June 2017 as per the email correspondence of 20 March 2017 from Stephen Webster to Stewart Geddes and the letter concluding the bargain from Messrs Morton Fraser to Urquharts Solicitors of 30 May 2017. It is agreed between the parties that the original Applicant became the landlord of the Respondent in any event on or around 1 July 2017.
4. Scotbet Ltd had entered into a tenancy agreement with the Respondent commencing on 1 January 2017 with an end date on 1 January 2020 and a monthly rent of £500.
5. The agreed rent is £500 to be paid in advance with the due date on the first day of the month in terms of Clause 1.10 of the tenancy agreement.
6. The rent arrears due as of the date of the CMD are agreed by the parties as being £5,433.82.
7. Since the payment of £450 on 29 January 2020 no further payments of rent have been made.

8. Mrs Huma Malik became the landlord for the Respondent when the agreement with Scotbet Ltd was renounced until the property was sold by her to Mr Waqas Malik on 26 November 2019.
9. In terms of the assignation of rental income and arrears dated 3 November 2020 Mrs Huma Malik has assigned to Mr Waqas Malik all her title and interest in any rental income from the property currently outstanding or to become due.

Legal Submissions and Reasons for Decision:

The Tribunal considered that the material facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or
- (c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;
- (b) identifying what facts are agreed between the parties;
- (c) raising with parties any issues it requires to be addressed;
- (d) discussing what witnesses, documents and other evidence will be required;
- (e) discussing whether or not a hearing is required; and
- (f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

However, in terms of Rule 18 of the Rules of Procedure:

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

- (a) may make a decision without a hearing if the First-tier Tribunal considers that—
 - (i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and
 - (ii) to do so will not be contrary to the interests of the parties; and
- (b) must make a decision without a hearing where the decision relates to—
 - (i) correcting; or
 - (ii) reviewing on a point of law,a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

1. The documents lodged are referred to for their terms and held to be incorporated herein.

2. The Tribunal did not consider that there was any need for a hearing as the essential facts of the case were sufficiently evidenced to make the relevant findings in fact to determine the case. Both parties wished the matter to be dealt with at the CMD.
3. The Tribunal makes the decision on the basis of the documents lodged by the former Applicant, the current Applicant and the Respondent and the information given at the 3 CMDs.
4. Initially the sum sought in the application was £1,233. It is not disputed that arrears since 29 January 2020 had increased by £500 on the first day of each month.
5. Clause 1.10 of the tenancy agreement states that rental payments of £500 are due on the first date of each month.
6. At the CMD on 29 September 2020 the parties had both agreed that the amount outstanding as of that date was £4,433.82. This was noted in the CMD note issued by the Tribunal.
7. The Applicant accepted at that CMD that whilst no further payments had been made, various items listed in the original rent statement, such as late payment fees etc. should have been deducted. It is agreed between the parties that no payments have been made since 29 January 2020 and that as of the date of the CMD on 6 November 2020 the outstanding rent amounts to £5,433.82, a sum which will increase by the rent amount of £500 each further month as the Respondent is not in a position to pay the rent or any payments towards the arrears.
8. Whilst in paragraph 8 of the representations of 30 October 2020 the Applicant had formally sought to amend the sum outstanding to £6,773 at the CMD on 6 November 2020, the Applicants representative at the CMD on 6 November 2020 agreed that the sum should only be amended to the amount agreed as outstanding by both parties as the CMD on 29 September 2020 and a further 2 months rent of £500 each. Thus the Tribunal allowed the amendment of the sum for which an order is sought in terms of Rule 13 of the Rules of Procedure to the sum of £5,433.82 agreed by both parties as outstanding on 6 November 2020.
9. Mr Gardiner for the Applicant had set out that the Applicant seeks payment of the outstanding amount in terms of the tenancy agreement and the Assignment entered into between the Applicant and the former Applicant. In terms of said agreement all sums due by the Respondent to the former landlord Mrs Huma Malik are now due to the Applicant Waqas Malik. This Assignment had been intimated and received by the Respondent prior to the CMD.
10. The Tribunal considers that the amount of outstanding rent arrears is now due to the Applicant.

11. The Respondent did not make a time to pay application at the CMD. She stated that she would seek a time to pay order when she was in a position to make contributions to the outstanding amount. The Tribunal was thus not able to make a time to pay direction.

Decision:

The Tribunal grants the order for payment of the amount of £5,433.82 by the Respondent to the Applicant

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.

Petra Hennig-McFatriidge

**Petra Hennig McFatriidge
Legal Member/Chair**

**9 November 2020
Date**