



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 70(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/20/0423

Re: Property at 40 Easter Drylaw Avenue, Edinburgh, EH4 2RA (“the Property”)

Parties:

Mr Keith Robertson, 11 Paisley Terrace, Edinburgh, EH8 7JW (“the Applicant”)

Ms Lena Robertson, 51/6 Firrhill Drive, Edinburgh, EH13 9EU (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order in the sum of Three thousand one hundred and two pounds and fifty six pence (£3,102.56)

Background

- 1 By application dated 7 February 2020 the Applicant sought an order for payment of rent arrears against the Respondent in the sum of £1375. In support of the application the Applicant provided a copy Private Residential Tenancy Agreement.
- 2 The Applicant subsequently provided a rent statement confirming that arrears had increased to the sum of £3,385.56 as at 1 May 2020.
- 3 By email dated 21 May 2020, the Applicant confirmed that the Respondent had vacated the property and produced a rent statement confirming a final arrears balance of £3,102.56 as at 16 May 2020. That figure took into account the deduction of the tenancy deposit in the sum of £925. The Tribunal duly

agreed, on the request of the Applicant, to amend the application to reflect the final balance of arrears.

- 4 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 14th August 2020. Due to the imposition of restrictions in response to the Covid-19 pandemic the Case Management was scheduled to take place by tele-conference. A copy of the application paperwork together with the date and time of the Case Management Discussion and instructions on how to join the tele-conference was served upon the Respondent by Sheriff Officers on 21st July 2020.
- 5 On 5th August 2020, the Respondent emailed the Tribunal with an application for a time to pay direction, in terms of which she admitted liability for the debt and sought payment at the rate of £5 per week. The Respondent explained in the application that she was unemployed, in receipt of universal credit and currently residing in temporary homelessness accommodation. The application was accompanied by a financial statement which showed the Respondent's income and outgoings.
- 6 On 10 August 2020, the Applicant submitted a response to the Respondent's application for a time to pay direction. He explained in the response that whilst he was not opposed to a time to pay order in principle the rate proposed by the Respondent was unacceptable and would take around 12 years to repay the debt in full. Having considered the Respondent's financial statement, the Applicant believed she could afford to pay more towards the debt. The Applicant further advised that the Respondent had previously been given the opportunity to enter into payment plans with the Applicant's Agent but had failed to do so. Having noted the Applicant's objection to the application for a time to pay direction the Tribunal determined to proceed with the Case Management Discussion.

The Case Management Discussion

- 7 The Case Management Discussion took place on 14 August 2020 by teleconference. Ms Sharon Shanley appeared on behalf of the Applicant. The Respondent, Ms Robertson, was present. The Legal Member explained the purpose of the Case Management Discussion and the process to be followed.
- 8 Ms Shanley explained that the Applicant sought an order for payment of rent arrears in the sum of £3,102.56. The arrears had accrued over a period of some time whilst Ms Robertson was the tenant of the property.
- 9 The Legal Member noted that Ms Robertson had submitted an application for a time to pay direction in terms of which she accepted liability for the debt. Ms

Robertson confirmed this to be the case. The Legal Member then asked Ms Robertson to explain her position regarding that application. Ms Robertson explained that for the past couple of years her employment had been up and down. She had been made redundant three times and had been in receipt of employment support allowance for a period of eight weeks after suffering an injury. She had found it increasingly difficult to keep up payments of rent in addition to council tax, electric and gas. For the better part of last year and this year she had been in and out of work. At present the only income she had was universal credit. Because she was in temporary homelessness accommodation at present her rent was high and she was unable to obtain alternative housing due to her financial circumstances. She was not entitled to claim a housing element of universal credit – this was paid directly – therefore she was currently left with approximately £270 per month. £5 per week was the most she could afford at the moment. She may be able to offer more in future when her circumstances change but she did not want to make an offer that she couldn't afford. Ms Robertson explained that she had a trust deed in place, which was entered into prior to the arrears accruing, and at a time when she was in employment. Sums were being deducted from her income in terms of that deed.

- 10 Ms Shanley explained that the Applicant opposed the time to pay direction, as it would take around 12 years to repay the debt, not including the interest accrued. She stressed that the Applicant didn't want to be seen as being unreasonable. He would be open to a time to pay order, perhaps over a three year period.

Findings in Fact and Law

- 11 The parties entered into a Private Residential Tenancy Agreement in respect of the property dated 28 January 2018 which commenced on 1 February 2018.
- 12 In terms of Clause 8 of the said Tenancy Agreement the Respondent had a contractual obligation to pay rent at the rate of £725 per month.
- 13 The tenancy terminated on 16 May 2020. As at the date of termination arrears in the sum of £3102.56 were outstanding.
- 14 The Respondent is liable for payment of the said sum of £3102.56 in terms of the Tenancy Agreement between the parties.

Reasons for Decision

- 15 The Tribunal was satisfied that it was able to make a determination of the application at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties. It was noted that there was no dispute over the substantive facts of the case, and the Respondent had confirmed that she accepted liability for the sum claimed by the Applicant. Having considered the terms of the tenancy agreement and rent statement produced by the Applicant, and based on its findings in fact, the Tribunal was satisfied therefore that the Respondent was liable to pay the sum of £3102.56.
- 16 The Tribunal then considered the Respondent's application for a time to pay direction. Whilst the Tribunal was sympathetic to the Respondent's position, it also had to take into account the detriment to the Applicant if the time to pay order was to be granted for what would be an extended period of time having regard to the level of payment proposed and the amount of debt due. The Tribunal did not consider it reasonable to expect the Applicant to wait for 12 years for the debt to be repaid. On the basis that the Respondent was unable to offer any alternative amount, the Tribunal considered it had no option therefore but to grant the order for the full amount sought. The Tribunal would stress however that this does not prevent the parties from having ongoing discussions regarding a repayment arrangement in the hope that the Respondent can increase the offer once her financial circumstances improve.
- 17 The Tribunal therefore made an order for payment against the Respondent in the sum of £3102.56.

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.

Ruth O'Hare

14 August 2020

Legal Member/Chair

Date