



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/19/1363

Re: Property at 351 1/R Clepington Road, Dundee, DD3 8AY (“the Property”)

Parties:

Mrs Rosalind Prophet or Herriotts, 4/287 Bank Street, South Melbourne, Vic 3205, Australia (“the Applicant”)

Ms Danielle Campbell, 351 1/R Clepington Road, Dundee, DD3 8AY (“the First Respondent”) and Elaine McCabe, 24 Roundyhill, Monifieth, DD5 4RZ (“the Second Respondent”)

Tribunal Members:

Shirley Evans (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment of FOUR THOUSAND FOUR HUNDRED AND FORTY ONE POUNDS AND SIXTY FIVE PENCE (£4441.65) STERLING with interest thereon at the rate of 2.5% running from the date of the decision of the First-tier Tribunal to grant this order, being 24 July 2019, until payment. The order for payment will be issued to the Applicant after the expiry of 30 days mentioned below in the right to appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by either Respondent.

Background

1. By application dated 1 May 2019 the Applicant’s solicitor applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for

an order for payment of rent arrears against the Respondents relating to a tenancy at Flat 1, 14 High Street, Montrose, DD10 8JL ("the Property"). The Application proceeded against the First Respondent as Tenant and against the Second Respondent as Guarantor.

2. On 31 May 2019, the Tribunal accepted the application under Rule 9 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations").
3. On 13 June 2019, the Tribunal enclosed a copy of the application to all parties and invited the Respondents to make written representations to the application by 1 July 2019. The Tribunal also advised parties that a Case Management Discussion under Rule 17 of the Regulations would proceed on 24 July 2019. This paperwork was served on the Respondents by Sarah Ferguson, Sheriff Officer, Perth on 17 June 2019 and certificates of execution were received by the Tribunal.
4. The Second Respondent did not make any written representations by 5 July 2019. The First Respondent lodged a Time to Pay application dated 17 June 2019 with the Tribunal on 27 June 2019. In terms of the Time to Pay application, the First Respondent admitted the arrears and asked that a Time to Pay direction be granted under the Debtors (Scotland) Act 1987, allowing her to pay £100 per month towards the arrears. This application was sent to the Applicant's solicitor by the Tribunal. On 1 July 2019 the Applicant's solicitor lodged a response to the Time to Pay application opposing the First Respondent's application on the basis that her proposal would take over 4 years to clear the arrears.

Case Management Discussion.

5. The Tribunal proceeded with the Case Management Discussion on 24 July 2019. The Applicant was represented by Mrs Royle, Messrs Baillie Shepherd, Solicitors. Initially there was no appearance by or on behalf of either Respondent. Ms Robertson from Rockford Ltd, the Applicant's letting agent attended as an observer.
6. The Tribunal had before it the Application with an AT5, a Short Assured Tenancy Agreement between the Applicant and the First Respondent, signed and dated 28 September 2017, a guarantor agreement between the Applicant and the Second Respondent signed and dated 28 September 2017, a continuing Short Assured Tenancy Agreement signed and dated 3 August 2018, a rent statement to 28 April 2019 showing how the arrears had accrued and an undated letter from the Applicant's agents to the Second Respondent demanding the arrears be paid.

7. The Tribunal also had before it the First Respondent's Time to Pay Application, the Applicant's objection with a rent statement to 28 June 2019 and email correspondence between the Applicant's agent and the First Respondent between 23 April – 21 September 2018 attached and referred to.
8. Mrs Royle submitted that she was seeking an order for payment for £4441.65, being the current level of arrears with interest at 8% per annum. Arrears were increasing on a monthly basis. With reference to the First Respondent's Time to Pay application, Mrs Royle submitted that it would take over 4 years for the arrears to be cleared. She further submitted that the Time to Pay application was incomplete as the First Named Respondent had not included any figure in her application for rent. On that basis, the First Named Respondent had over £600 per month free after her outgoings had been paid, but was only offering £100 per month towards the arrears. With reference to the email correspondence before the Tribunal, previous promises had been made to pay the arrears, but had not been adhered to. Mrs Royle further submitted that the second named Respondent had made no Time to Pay application. In all the circumstances, she submitted the Tribunal should grant the order without a Time to Pay Direction.
9. Thereafter the Tribunal heard Mrs Royle's submissions in relation to a conjoined eviction action against the First Named Respondent under case reference FTS/HPC/19/1319. After her submissions in that action, but before the Tribunal had given its decision in either action, both Respondents appeared. They were flustered and anxious that they were late and explained they had been delayed in traffic and had been sitting in the waiting room for over 10 minutes.
10. Despite the Tribunal having heard the Case Management Discussion, in the interest of justice, the Respondents having now appeared, the Tribunal proceeded again with the Case Management Discussion to give both Respondents an opportunity to participate in the proceedings. The Second Named Respondent explained she was the First Named Respondent's grandmother.
11. The Tribunal referred the First Respondent to her application for a Time to Pay Direction. The Tribunal noted the First Named Respondent admitted she was in rent arrears. The First Named Respondent confirmed that. The Tribunal went through the figures on the Time to Pay application with the First Named Respondent. She stated that under this application she was willing to pay £100 minimum per month and a maximum of £300 towards the arrears. When asked by the Tribunal as to whether that £100 was on top of the monthly rent of £575, the First Respondent stated that it was not. She candidly admitted she was not in a position to pay the rent of £575. The most

she could pay was £300 per month and accepted that a payment of £300 per month would leave a shortfall of £275 per month. She simply could not afford to pay the rent and a sum towards the arrears, hence the fact that the Time to Pay application did not include a figure in it for ongoing rent. She explained she also had an overpayment of income support to pay to the DWP and that there was a recent wages arrestment for Council Tax. She explained she simply was not in a financial position to pay rent and a sum towards her arrears at the same time.

12. The First Respondent explained she worked as a care assistant on a zero hours contract. A couple of months ago she had gone online to enquire about Universal Credit. She explained the Department of Works and Pensions ("DWP") would contact her when she could apply for Universal Credit. The DWP had not been in contact with her. When asked by the Tribunal as to whether she had chased this up with the DWP or made enquiries with the DWP she stated she had not. When asked about whether she had sought money advice, she stated she had not.
13. Mrs Royle at this point advised the Tribunal that Dundee North Law Centre had written to her firm on behalf of the First Named Respondent on 28 March 2019. She handed a copy of the letter to the Tribunal. The Tribunal Clerk Ms Forbes obtained copies of this letter, which were handed to both Respondents, and a copy lodged with the Tribunal. Mrs Royle explained that this letter contained an offer to pay the arrears by instalments, but this had been refused. Neither she nor her client's agents had heard anything further. Previous offers had been made, but not adhered to. She referred to email correspondence which had been lodged with her response to the First Respondent's Time to Pay application. She also referred to the rent statement to 28 June 2019 which had also been lodged in response to the First Respondent's Time to Pay application. No payment had been received since £70 was paid on 15 April 2019. The arrears were increasing and were £4441.65 as of 28 June 2019. She submitted that it was not an option for the First Named Respondent to pay either the rent or the arrears. Mrs Royle again asked the Tribunal to grant an order for payment in the increased sum of £4441.65.
14. When asked by the Tribunal as to whether she admitted the arrears had increased to £4441.65, the First Named Respondent admitted they had.
15. The Second Named Respondent accepted that she had signed the guarantor agreement. However, she explained to the Tribunal that she had been led to believe by the Applicant's agents that the guarantor agreement only related to her agreeing to pay for any damage to the Property caused by the First Named Respondent's dogs. She had taken the Applicant's agents at their

word and had signed the guarantor agreement on that basis. When referred to the guarantor agreement by the Tribunal she accepted there was no reference to her specifically being liable for damage caused by the First Named Respondent's dogs. The Tribunal also pointed out that specific reference had been made in the guarantor agreement to the fact it was attached to the tenancy agreement and made specific reference to the monthly rent of £575. The Second Named Respondent explained she had not realised that. When asked by the Tribunal as to whether she had read the guarantor agreement before signing it, she advised that she had not.

16. Mrs Royle submitted that it was clear from the guarantor agreement, which was attached to the tenancy agreement that the Second Named Respondent was liable for all payment obligations under the tenancy agreements between the Applicant and the First Named Respondent. She submitted that the guarantor agreement was clear that the rent was £575 per month and that the Second Named Respondent was liable to pay that if the First Named Respondent failed to pay the rent. The tenancy agreement of 3 August 2018 was a continuation of the tenancy agreement of 28 September 2017 and accordingly the Second Named Respondent continued to be liable to the Applicant under the guarantor agreement. She repeated that she was seeking the increased sum of arrears in £4441.65 in all the circumstances.

17. Mrs Royle also submitted she was also seeking interest at the judicial rate of 8%, but accepted the Tribunal had discretion in this regard and that there was no provision for interest in the tenancy agreement.

Findings in Fact

18. By way of a Short Assured tenancy agreement between the Applicant and the First Respondent signed and dated 28 September 2017 and a continuing Short Assured Tenancy Agreement between the Applicant and the First Named Respondent signed and dated 3 August 2018, the Applicant agreed to Lease the Property at a monthly rent of £575 to the First Named Respondent. The First Named Respondent is liable to pay £575 per month to the Applicant in terms of Clause 3 of both tenancy agreements.

19. The Second Named Respondent signed a guarantor agreement on 28 September 2017. The Second Named Respondent had not read the guarantor agreement before she signed it. Under the guarantor agreement, the Second Named Respondent agreed to indemnify the Applicant against all losses as a result of any failure of the First Named Respondent as tenant to comply with the tenancy agreement. The guarantor agreement was attached to the tenancy agreement dated 28 September 2017 between the Applicant and the First Named Respondent. The guarantor agreement provided the

Second Named Respondent's obligations under the guarantor agreement would continue and remain fully effective during any continuation of the tenancy agreement. The First Named Respondent has fallen into rent arrears of £4441.65. The First Named Respondent accepted she was in arrears in the sum of £4441.64.

20. The First Named Respondent had consulted with Dundee North Law Centre on or about 28 March 2019. Dundee North Law Centre wrote to the Applicant's solicitor with a repayment proposal on 28 March 2019. This was not acceptable to the Applicant.
21. The First Named Respondent last made a payment of £70 to the rent on 15 April 2019. She has made no payments of rent since then.
22. The First Named Respondent is not in a position to pay the agreed rent of £575 per month.
23. Arrears are accruing at £575 per month.

Reasons for the Decision

24. The Applicant's solicitor provided evidence of non-payment of rent in the form of the tenancy agreements, rent statements and email correspondence with the First Named Respondent. The First-Named Respondent accepted she was in rent arrears of £4441.65. The First Named Respondent admitted she could not afford to pay rent and any sum towards the arrears. The Second Named Respondent had signed the guarantor agreement. Whilst the Tribunal accepted the Second Named Respondent had not read this agreement before signing it, she had nevertheless signed it and was bound by its terms.
25. The Tribunal was prepared to allow the sum sought to be increased to £4441.65 as per the rent statement to 28 June 2019 as the First Named Respondent accepted she was in arrears in that sum. On the basis of the oral submissions made on behalf of the Applicant, who opposed the Time to Pay application, and both Respondents and with consideration to the matters under Section (1A) of the Debtors (Scotland) Act 1987 the Tribunal was not satisfied that it was reasonable to make a Time to Pay direction under Section 1 of the Debtors (Scotland) Act 1987. The Tribunal accordingly granted an order for payment of £4441.65 against both Respondents.
26. The Tribunal was not prepared to allow interest to run at the judicial rate of 8% per annum. The rate of interest sought is excessive. The Tribunal used its discretion and will allow interest to run at 2.5% per annum.

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.

S Evans

Legal Member/Chair

Date

2 August 2019.