



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/21/2814

Re: Property at 441 Greenrigg Road, Cumbernauld, G67 2PP (“the Property”)

Parties:

AGI Property Ltd t/a AGI Properties, 14 Shielhall Gardens, Rosewell, Edinburgh, EH24 9BD (“the Applicant”)

Miss Claire McPhee, Miss Keira Bachurzewski, 441 Greenrigg Road, Cumbernauld, G67 2PP (“the Respondents”)

Tribunal Members:

Sarah O'Neill (Legal Member) and Mary Lyden (Ordinary Member)

Decision

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 £3022.16 should be granted in favour of the applicant. The tribunal made a time to pay direction under Section 1(1) of the Debtors (Scotland) Act 1987, requiring the respondents to pay the sum of £200 per month until the full amount has been paid.

Background

1. An application was received on 11 November 2021 from the applicant's representative, Countrylet Ltd, 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 an unspecified sum in rent arrears only from the first respondent, Miss Claire McPhee. In response to a letter from the tribunal administration, the applicant's representative enclosed a revised

application stating that the applicant was seeking payment of rent arrears in the sum of £2177.97 together with a rent statement showing this amount to be outstanding. The rent statement provided by the applicant's representative showed an opening balance due of £1722.60.

3. Following further correspondence between the tribunal administration and the applicant's representative, it became apparent that Miss McPhee had previously been a sole tenant at the property and that both respondents had then entered into a joint tenancy with the applicant from 7 July 2020. The outstanding balance shown at the start of the tenancy in fact related to rent arrears owing from Miss McPhee's previous sole tenancy. The tribunal administration advised the applicant's representative that the current application related only to the joint tenancy and could therefore only include rent arrears relating to that tenancy.
4. On 11 February 2022, an amended application form dated 2 February 2022 was received from the applicant's representative, adding the second respondent, Miss Keira Bachurzewski. Also received were an updated rent statement, showing the outstanding arrears in relation to the joint tenancy as £1447.16 as at 1 February 2022. A copy of the private residential agreement between the applicant and both respondents dated 10 July 2020 was also submitted on behalf of the applicant, together with several letters to the respondents notifying them of outstanding arrears of varying amounts. The applicant's representative also submitted a copy of a notice to leave dated 1 December 2021, together with proof of service by sheriff office on both respondents, and a Section 11 notice sent to North Lanarkshire Council by the applicant's representative on 11 January 2022.
5. The application was accepted for determination on 23 March 2022. A case management discussion (CMD) was arranged for 25 May 2022. Notice of the CMD, together with the application papers, was served on the respondents by sheriff officer on behalf of the tribunal on 8 April 2022.
6. The tribunal issued a direction to the applicant on 25 April 2022. This noted that various different amounts had been stated in the application forms and rent statements submitted by the applicant. It also noted that it appeared from the most recent rent statement received by the tribunal that the amount owed as at 1 February 2022 was £1447.16. The applicant was directed to confirm whether this was the amount sought in advance of the CMD. An email was received from Countrylet Ltd on 27 April 2022, confirming that this was the amount sought by the applicant.

The initial CMD

7. At the CMD scheduled for 25 May 2022, neither party attended. There appeared to have been some confusion as to who would be representing the

applicant and when the CMD was due to take place. The tribunal therefore adjourned the CMD to a later date to give the parties a further opportunity to attend.

8. In response to a second direction issued by the tribunal on 25 May 2022, an email was received from Mr Stuart Archibald, Director of AGI Property, confirming that he, rather than Countrylet Ltd, would now be representing the applicant.

The adjourned CMD

9. The adjourned CMD was held by remote teleconference call on 11 August 2022. Mr Archibald represented the applicant. One of the respondents, Miss Bachurzewski, was present on the teleconference call and represented herself. The other respondent, Miss McPhee, was represented by Mr James Goodman.
10. Mr Archibald said that the arrears had now increased and that the outstanding arrears as at 8 August 2022 were £2759.96. He indicated that he had been seeking a payment order for that amount, but accepted that he had not sought to amend the application in terms of the tribunal rules to increase the sum sought to that amount. He was therefore content to seek a payment order for the sum of £1447.16.
11. Miss Bachurzewski told the tribunal that she had been paying her half share of the rent throughout. She was on benefits and £262.50 was being paid direct to the applicant every month on her behalf via housing benefit. She said however that if required she would pay more towards the arrears. The legal member pointed out that as stated at paragraph 1 of the tenancy agreement, both respondents were as joint tenants jointly and severally liable for the tenants' obligations under the tenancy agreement, including payment of the rent. Miss Bachurzewski indicated that she accepted this.
12. Mr Archibald agreed that Miss Bachurzewski had been paying her rent and was not in arrears regarding her half share of the rent due.
13. Mr Goodman said that Miss McPhee had decided to stop paying her half share of the rent from January 2022 onwards because there was severe mould in the property. She suffers from asthma and this was affecting her health. He said that Miss McPhee had reported the mould to Countrylet Ltd on numerous occasions, but that no action had been taken to address this. Miss McPhee was willing to start paying the rent again once the mould issue had been addressed.
14. Miss Bachurzewski confirmed that there were issues with mould in the property, which had been affecting Miss McPhee's health. She said that the respondents

had raised the issue numerous times with Countrylet Ltd, which had said it would get someone out to investigate, but this had not happened.

15. Mr Archibald said that this was the first time he had heard anything about mould in the property or about Miss McPhee withholding rent because of this. He said that he was not disputing that there may be mould issues within the property because he did not know whether this was the case or not. He indicated that the letting agent had not told him about this.
16. He pointed out that Miss McPhee also owed arrears in relation to her formal sole tenancy of the property. He said that there had been multiple attempts to set up a payment arrangement with Miss McPhee, none of which had resulted in a repayment agreement.
17. Mr Goodman said that there were several different amounts shown on the various rent statements and that it was not therefore clear exactly what sum was owed by the respondents. He asked for a clear up to date rent statement to be provided by the applicant. He also said that Miss McPhee intended to make a claim for universal credit in order to receive housing benefit and ensure that her rent was paid every month in future.
18. It was not entirely clear to the tribunal on the basis of Mr Goodman's representations whether Miss McPhee 1) wished to dispute that all or some of the rent arrears were owed by the respondents due to the alleged mould in the property or 2) accepted that the unpaid rent was due and wished to reach a payment arrangement. Mr Goodman did, however, clearly state that she wished to dispute the payment application. The tribunal noted that the respondents appeared to be seeking to exercise the common law remedy of retention of rent until the alleged mould issues were addressed. It was not clear, however, whether they also sought to argue that the amount owed by them should be abated due to the impact of the alleged mould on their enjoyment of the property.
19. The tribunal therefore considered that further evidence was required from both parties and that a hearing should be fixed to resolve the dispute between the parties. A hearing was fixed for 28 September 2022.
20. On 12 August 2022, the tribunal issued a third direction to the parties. This required the applicant to provide a up to date rent statement and invited the applicant to submit written representations in relation to the application, including 1) the allegations of mould issues in the property raised by the respondents at the CMD and 2) any amendments which the applicant may seek to make to the application. It also invited the respondents to submit written representations and evidence in relation to the alleged mould and why they considered that they should not pay all or some of the rent due by them as a

result- or alternatively to confirm whether they accepted that the rent arrears were due.

21. On 9 September 2022, an email with various attachments (including an updated rent statement and copies of call log notes from Countrylet Ltd relating to the property) was received from Mr Archibald in response to the direction. No response to the direction was received from the respondents. A screenshot was received from Mr Goldman on 28 September 2022 shortly before the hearing showing that Miss McPhee would be receiving universal credit housing payments of £262.50 towards her rent from 3 October 2022.

The hearing

22. The tribunal held a hearing by remote teleconference call on 28 September 2022. Mr Archibald represented the applicant. Miss Bachurzewski was present on the teleconference call and represented herself. Miss McPhee was again represented by Mr Goodman.
23. During the hearing, Mr Archibald said that he had included a covering email with his email of 9 September 2022. This had not been received by the tribunal administration, however, and had therefore not been sent to the respondents. During the tribunal, Mr Archibald sent several screenshots of the original email to the tribunal by email. These were forwarded to Mr Goodman and Miss Bachurzewski. The screenshots showed that Mr Archibald had requested to amend the sum claimed for to £3022.16, the outstanding amount shown on the updated rent statement as at 8 September 2022. Mr Archibald confirmed that the applicant now sought an order for the sum of £3022.16.
24. The covering email also stated that the applicant wished to call Ms Jeanette Harrison of Countrylet Ltd as a witness. Mr Archibald indicated that he wished Ms Harrison to tell the tribunal about some of the issues raised by the respondents at the CMD, particularly the allegations of damp and mould in the property.
25. The legal member asked Mr Goodman and Miss Bachurzewski whether they still wished to dispute that the rent arrears sought were due on the basis that the property was damp and mouldy. Following further discussion, it was unclear to the tribunal on the basis of Mr Goodman's submissions whether Miss McPhee admitted that the arrears were due or whether she still wished to defend the application on the grounds that there was damp and mould in the property. Mr Goodman then confirmed that Miss McPhee did not wish to pursue a defence on the basis that there were damp and mould in the property.
26. He said that Miss McPhee accepted that the amount of rent arrears stated on the updated rent statement (£3022.16) was due. She wished, however, to

dispute the arrears which were allegedly due in relation to her sole tenancy of the property, which predated the current joint tenancy with Miss Bachurzewski.

27. Miss Bachurzewski also confirmed that she did not wish to pursue a defence in relation to the alleged mould and damp issues. She said that she accepted that the sum of £3022.16 was due and confirmed that she was willing to make regular payments towards the arrears.
28. Mr Goodman said that Miss McPhee's rent would now be paid monthly via universal credit from October onwards and he indicated that she was happy to begin paying off the arrears that were due. How much she was able to pay would depend, however, on whether the related eviction application went ahead. If an eviction order were granted, she would have less ability to pay off the arrears, as she would need to find a new property to live in.
29. Mr Archibald said that he was pleased to see that Miss McPhee's rent would now be paid from October onwards. He said that the sole reason for the eviction application being made was the level of rent arrears owed. While he was not prepared to withdraw the eviction application at this stage, were the respondents to begin paying the rent consistently and to start paying down the arrears, he might consider doing so. He said that he wished to see better communication between the respondents and the letting agent in the future. Mr Goodman agreed that communication had been poor between the respondents and the letting agent and suggested monthly contact between them in future.
30. Both Mr Goodman, on behalf of Miss McPhee, and Miss Bachurzewski said that they wished to make an application to the tribunal for time to pay the sum due. Mr Archibald indicated that he was content for them to do so, and that he was willing to accept an offer of instalments provided that these were paid at a reasonable level.
31. The tribunal therefore continued the hearing to a later date, to allow the respondents time to complete time to pay application forms. The legal member explained that by submitting these applications, the respondents were admitting that the sum sought was due. Once the completed forms had been received, they would be sent to Mr Archibald on behalf of the applicant seeking his views on whether the payments offered were acceptable. The tribunal would then consider whether it was reasonable in all the circumstances to make a time to pay direction. Should the tribunal agree to make an order subject to a time to pay direction, there would be no need for a further hearing and a decision and order would be granted without one.
32. The legal member also explained that while the respondents could complete separate application forms, only one time to pay direction could be made in respect of both of them as the tenancy was a joint one, and they were jointly and severally liable for the debt.

The time to pay applications

33. The tribunal issued a direction on 28 September 2022, directing each of the respondents to:

1. Submit an application for a time to pay direction to the tribunal.
2. Confirm in writing whether they agreed that the total sum owed in rent arrears as at 8 September 2022 was £3022.16, and that this was the sum which they were seeking to pay to the applicant in instalments.

34. Two time to pay applications dated 16 October 2022 were received, one from each of the respondents. Each respondent stated that they admitted the claim and that they were willing to pay £100 per month towards the debt. Emails were received from both Mr Goodman on behalf of Miss McPhee and from Miss Bachurzewski on 24 October 2022 confirming that they agreed that the total sum outstanding as at 8 September 2022 was £3022.16.

35. On 24 October 2022, a response to the time to pay direction application was received from Mr Archibald, who stated that the applicant was content with the respondents' proposals for time to pay.

Findings in fact

36. The tribunal made the following findings in fact:

- There was a private residential tenancy in place between the applicant and both respondents, which commenced on 7 July 2020.
- The applicant is the owner of the property.
- The rent payable under the tenancy agreement was £525 per month.
- Miss Bachurzewski's half share of the rent (£262.50) had been paid each month during the tenancy
- Miss McPhee had not paid her share of the rent from January 2022 until September 2022. She was now receiving universal credit housing payments of £262.50 towards her rent from 3 October 2022.
- As at 8 September 2022 the date of the CMD, the respondents owed the applicant the sum of £3022.16 in rental payments. This was admitted by the respondents.

Reasons for Decision

37. The sum due in rent arrears by the respondents to the applicant as at 8 September 2022 was £3022.16. This had been admitted by the respondents. While the applicant had sought to amend the sum sought from £1447.16 to £3022.16 in an email of 9 September 2022, this had not been received by the tribunal and had not therefore been sent to the respondents prior to the hearing.

Therefore neither the tribunal nor the respondents had received the required notification of the applicant's request to amend the sum sought in advance of the hearing as required in terms of rule 14A of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ("the 2017 rules").

38. The updated rent statement received on 9 September 2022 and sent to the respondents in advance of the hearing showed the outstanding sum due to be £3022.16. Both the tribunal and the respondents had become aware of the amendment request during the hearing. The tribunal provided the respondents with an opportunity to dispute the sum due in its direction of 28 September 2022. Both respondents confirmed in writing on 24 October 2022 that they accepted this sum was due. The tribunal therefore agrees to the applicant's request to amend the sum sought to £3022.16.
39. There was agreement between the parties that the sum sought by the applicant was due by the respondents. The respondents had admitted the claim, and the tribunal therefore determined that an order for payment should be granted.
40. The tribunal then considered whether to grant the order subject to a time to pay direction, as requested by the respondents. Section 1 of the Debtors (Scotland) Act 1987 states shall, if satisfied that it is reasonable in all the circumstances to do so, and having regard to the matters mentioned in subsection 1A of the 1987 Act, direct that the sum claimed shall be paid by instalments or as a lump sum.
41. The matters mentioned in subsection 1A are:
 - a) The nature of and reasons for the debt in relation to which the order is 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; and
 - e) The reasonableness of any refusal by the creditor of, or any objection by the creditor to, any proposal by the debtor to pay that debt.
42. The tribunal considered whether it was reasonable in all the circumstances to grant a time to pay direction. It noted that the applicant was content to accept the respondents' proposals to pay. The tribunal considered the respondents' respective financial and personal circumstances. It noted that both respondents are unemployed and in receipt of benefits, and that Miss McPhee has two children under the age of 18. It also noted that going forward, Miss McPhee's rent would be paid through universal credit. The tribunal also noted that it would take the respondents around 15 months to pay off the debt at this rate.
43. Having considered all of the evidence before it, the tribunal is satisfied that it is reasonable in all the circumstances to grant a time to pay direction as sought

by the respondents and accepted by the applicant.

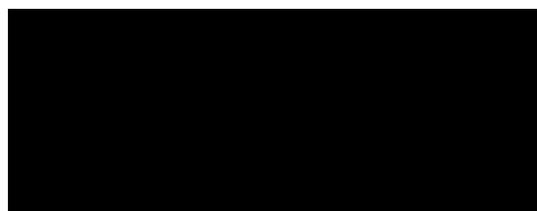
44. The parties are advised that if the respondents were to miss two payments, on the date the third payment becomes due, the time to pay direction collapses and the applicant can then begin to enforce payment for the outstanding amount due.

Decision

The tribunal grants an order for payment by the respondents to the applicant for the sum of £3022.16. The order is granted subject to a time to pay direction under which the respondents are required to pay the sum of £200 per month between them until the full amount has been paid.

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

8 November 2022 _____
Date