



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/CV/22/3050

Re: Property at 94 Kirkfield Road, Kirkfieldbank, ML11 9JL (“the Property”)

Parties:

Mr Allan Smith, 173 Riverside Road, Kirkfieldbank, ML11 9JR (“the Applicant”)

Miss Laura MacPherson, 35 Lesmahagow Road, Lanark, ML11 9JT (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment against the Respondent in favour of the Applicant in the sum of £2,430 be made.

Background

1. By application dated 25 August 2022, the Applicant sought a payment order in the sum of £2,430 against the Respondent in respect of rent arrears arising from a former tenancy of the Property, in terms of Rule 70 of the Regulations.
2. Supporting documentation was submitted in respect of the application, including a Rent Statement and a copy of the Tenancy Agreement.
3. A Legal Member of the Tribunal with delegated powers from the Chamber President subsequently issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations on 9 November 2022. A Case Management Discussion (“CMD”) was assigned for 6 February 2022. Notification of the CMD and copies of the case papers were served on the Respondent by Sheriff

Officer on 1 December 2022. Written representations were to be lodged by 20 December 2022.

4. On 5 January 2023, she emailed a completed Time to Pay Application to the Tribunal Administration. This was circulated to the Applicant and the Applicant's agent then emailed a Response Form to the Tribunal Administration on 12 January 2023, rejecting the Time to Pay offer which had been made by the Respondent. The Respondent was notified of same and that the matter would therefore be considered by the Tribunal at the CMD.

Case Management Discussion

5. The CMD took place by telephone conference call on 6 February 2023 at 2pm. The Applicant was represented by Mrs Lynne Bridges of S & J Property Letting. The Legal Member delayed the start of the CMD for approximately 5 minutes to see if the Respondent would join the call but she did not do so.
6. After introductions and introductory remarks by the Legal Member, the Applicant's representative addressed the Application and confirmed that an order for payment in the sum of £2,430 was still being sought. The Legal Member noted that the Respondent had indicated in her Time to Pay Application that she admitted the debt but asked the Applicant's representative some questions in order that the Tribunal could ascertain whether it was appropriate for a payment order to be granted in the sum sought.
7. The Applicant's representative confirmed that the Respondent had rented the Property from the Applicant for some years, by virtue of a Short Assured Tenancy which commenced on 22 July 2014 and had continued on until the Respondent moved out of the Property on 15 March 2022. The monthly rental in terms of the tenancy had originally been £550 but this had increased to £585 during 2021. The Respondent's circumstances changed during the Covid pandemic and she could no longer afford the Property. The Applicant allowed the Respondent to pay reduced rent for a period but she was unable to sustain the payments. The rent account fell into arrears. Reference was made to the Rent Statement and Schedule of Payments which had been lodged in support of the application. The rent payment made in October 2021 was short and no payments at all were made during the period November 2021 to February 2022. The Respondent vacated the Property on 15 March 2022 and the Applicant's representative confirmed that the last month's rent had been apportioned up to that date. The Respondent had offered to pay off the rent arrears which had accrued at the rate of £50 per month but only made two payments of that amount after leaving the Property, on 30 April 2022 and 21 July 2022. In addition, the Applicant recovered the deposit of £550 which had been paid at the outset of the tenancy and applied this to the rent arrears on 7 June 2022. The balance of the rent arrears owing was then £2,430 which is the amount now sought. The Applicant's representative confirmed that no further payments had been made by the Respondent since.

8. The Applicant's representative confirmed that their position in respect of the Time to Pay Application submitted by the Respondent remains the same. Reference was made to the Time to Pay Application and the Applicant's Response Form to that. The Applicant's representative stated that, although it is appreciated from the detailed information provided by the Respondent regarding her income, outgoings and general financial and personal circumstances that she is struggling financially, the Applicant regards the offer of £20 as inadequate as the debt would take over ten years to pay off at that rate. She indicated that, although the Applicant had been amenable previously to the Respondent paying the arrears off at £50 per month, the Respondent had not maintained payments at that rate and only made two payments after leaving the Property in April and July 2021 and nothing since. The Applicant requested that the Tribunal refuse the Time to Pay Application and make an order today in respect of the full sum owing.

Findings in Fact

9. The Applicant was the owner and former landlord of the Property.
10. The Respondent was the tenant of the Property by virtue of a Short Assured Tenancy commencing on 22 July 2014..
11. The rent in terms of the tenancy was originally £550 per calendar month, which was increased during the tenancy to £585 per calendar month.
12. Rental payments became erratic, some were missed entirely and arrears accrued.
13. The Respondent vacated the Property on 15 March 2022.
14. The Respondent offered to pay off the arrears at the rate of £50 per month when she vacated the Property.
15. After vacating the Property, the Respondent made two payments of £50 each on 30 April 2022 and 21 July 2022 towards the arrears.
16. The last payment received from the Respondent was £50 on 21 July 2022.
17. The amount owing in rent arrears when this application was submitted to the Tribunal on 25 August 2022 was £2,430.
18. The sum of £2,430 remains due and resting owing by the Respondent to the Applicant.
19. The Respondent admits the claim in terms of her Time to Pay Application submitted to the Tribunal.

20. The Respondent offered to pay the amount outstanding at the rate of £20 per month in terms of the Time to Pay Application which was not accepted by the Applicant.

21. The Respondent did not attend the CMD.

Reasons for Decision

22. The Respondent did not attend the CMD, having been properly and timeously notified of same. It was noted, however, that the Respondent did not dispute the Applicant's claim. The Legal Member was therefore satisfied that the application did not require to be continued to on to an Evidential Hearing.

23. The Legal Member was further satisfied from the information contained in the application and supporting documentation, together with the oral submissions made by the Applicant's representative at the CMD that the balance of the sum claimed in unpaid rent in respect the tenancy of £2,430 is due and resting owing by the Respondent and that an order for payment in that sum could properly be made today.

24. Having considered the information contained in the Time to Pay Application submitted by the Respondent and the Response Form, together with the oral submissions made by the Applicant's representative today, the Legal Member was not satisfied that it would be reasonable in all of the circumstances to make a Time to Pay Direction in terms of the Debtors (Scotland) Act 1987, as amended, allowing the Respondent to pay the amount due by instalments of £20 per month. Accordingly, the Legal Member refused the Time to Pay application. In doing so, the Legal Member had regard to the factors listed in Section 1A of the 1987 Act. The Legal Member took into account the information the Respondent had provided regarding her difficult financial circumstances but considered that this was outweighed by the fact that it would take over 10 years for the debt to be cleared at the rate offered, and that the Applicant had previously been amenable to accepting instalment payments (albeit at a higher rate than now offered), that the Respondent had not maintained the previous payment arrangement she had entered into with the Applicant and that the last payment made by the Respondent was £50 on 22 July 2022.

Decision

25. The Legal Member accordingly determines that an order for payment by the Respondent of the sum of £2, 430 should be made in favour of 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.

Legal Member/Chair

6 February 2023
Date