

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014 (“the 2014 Act”) and Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/CV/23/4416

Re: Property at 40 Windsor Gardens, Burnbank, Hamilton, ML3 0ND (“the Property”)

Parties:

Mrs Jan Hill and Mr Richard Hill, Techno Park, Al Raha Gardens, Khalifa City, United Arab Emirates (“the Applicants”)

Bannatyne Kirkwood France & Co, 16 Royal Exchange Square, Glasgow G1 3AG (“the Applicants’ Representative”)

Mr James McGrory, 39 Oronsay Road, Airdrie, South Lanarkshire, ML6 8FX and Mr Gordon Frew, present address unknown, previously residing at 40 Windsor Gardens, Burnbank, Hamilton, ML3 0ND (“the Respondents”)

Tribunal Member:

Ms Susanne Tanner KC (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined that the Respondents should pay to the Applicants the sum of FIVE THOUSAND FIVE HUNDRED AND NINETY FIVE POUNDS AND TWO PENCE (£5,595.02) STERLING, plus interest at eight per cent (8%) per annum from the date of the payment order on 13 January 2025 until payment; and made an Order for Payment in respect of the said sum against both Respondents, with a Time to Pay Direction to pay £54.00 per week until payment, with the first payment being due no later than thirty days after intimation of the Order for Payment.

Reasons

Procedural History

1. The first Case Management Discussion (CMD) took place on 27 March 2024. The second CMD took place on 26 July 2024. The third CMD took place on 26 August 2024. Reference is made to the Notes on the CMDs which were sent to all parties after each CMD.
2. At the third CMD, following receipt of a payment by the first Respondent Mr McGrory in the sum of £5595.02, the Application was amended to decrease the principal sum claimed to £5595.02, plus interest at 8% from the date of the order, in terms of the contractual rate specified in the tenancy agreement. Both Respondents admitted that the reduced principal sum is due by them jointly and severally to the Applicants. The CMD was adjourned to 4 October 2024 at 1000h to allow the second Respondent, Mr Frew, to submit an application for a Time to Pay Direction.
3. After the third CMD, Mr Frew submitted an application for a Time to Pay Direction, with supporting evidence. He offered to pay the full admitted debt at the sum of £21.51 per week.
4. The Applicant's Representative opposed the Time to Pay Direction sought on the basis that at that rate it would take around five years for the debt to be cleared.
5. The CMD on 4 October 2024 was postponed to 13 January 2025 at 1000h.

CMD: 13 January 2025, 1000h, teleconference

6. All parties joined the Case Management Discussion. The Applicants were represented by Mr Jarvie.
7. Mr Jarvie confirmed that the Time to Pay Direction sought by the Second Respondent is opposed due to the length of time that the debt has been outstanding and the length of time that it would take for the debt to be cleared, in the region of five years. He confirmed that interest on the debt is also being sought at the contractual rate of eight per cent per annum. He said that he is instructed to seek an unrestricted payment order for the full sum against both Respondents but that as discussed previously, the Applicants are willing to discuss an informal arrangement for re-payment with the Respondents if the unrestricted payment order is made.

8. Mr Frew said that no payment has been made on the remaining balance since the third CMD. He said that his financial position has not improved since he made the Time to Pay application. However, he said that he is in a position to increase the level of the weekly amount offered for a Time to Pay Direction so that the total debt would be paid in a shorter period. He said that he is trying to take responsibility for the debt. He increased the offer to £27.00 per week.
9. Mr McGrory said that as he explained in previous CMDs, his own financial position has changed since he became the guarantor for the tenancy and he now has his own financial difficulties. He said that he had paid fifty per cent of the rent arrears at an earlier stage of the case hoping that was a gesture that would be accepted. He offered to match the increased weekly payment being offered by Mr Frew and to pay an additional £27 per week to the Applicants.
10. Both Respondents confirmed that they understood that the admitted debt was due by them to the Applicants on a joint and several basis and that if a Time to Pay Direction is made it would be for the sum of £54.00 per week on a joint and several basis, even if they choose to pay £27.00 each. They also confirmed that they understand that interest at the contractual rate of eight per cent per annum is being sought on the principal sum from the date of the decision of the payment order.
11. The CMD was adjourned to allow Mr Jarvie to seek instructions from his clients on the increased offer of £54.00 per week on a joint and several basis from both Respondents. Following the adjournment, Mr Jarvie confirmed that he had instructions from the Applicants to accept the offer.

Findings in Fact and Law

12. The Respondents owe £5595.02 to the Applicants in respect of rent arrears for Mr Frew's former tenancy of the Property at 40 Windsor Gardens, Burnbank, Hamilton, ML3 0ND, in terms of which the first Respondent Mr McGrory was Mr Frew's guarantor.
13. Contractual interest in terms of the tenancy agreement is eight per cent per annum.

Discussion

14. On the basis that the Applicants accept the increased offer for a Time to Pay Direction for the admitted debt and that that would result in the principal sum being paid off within two years, I decided to make a Payment Order for

£5595.02, with interest at the rate of eight per cent per annum and to make a Time to Pay Direction against both Respondents on a joint and several basis for £54.00 per week, with the first payment being due no later than 30 days after intimation of the Order for Payment.

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.

Ms Susanne Tanner KC
Legal Member

13 January 2025