



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies)(Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/19/3324

Re: Property at 104 Rimpleton Avenue, Glenrothes, Fife, KY6 2AW (“the Property”)

Parties:

Mr Gordon Laing, Mrs Gillian Laing, 30 Laggan Crescent, Glenrothes, Fife, KY7 6FY (“the Applicants”)

Mr Derek Munro, 1 Front Row, Croftouterly, Fife, KY6 3PD (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicants were entitled to an order for payment in the sum of £974.53 payable by way of instalments under a Time to Pay Direction of the Debtors (Scotland) Act 1987 at the rate of £30.00 per week.

1. By application dated 16 October 2019 the Applicants’ representatives Fife Letting Service Limited applied to the Tribunal for an order for payment by the respondent in respect of alleged arrears of rent arising from the respondent’s tenancy of the property. The Applicants’ representative submitted a copy of the lease, a rent statement and a letter of consent from the joint owner of the property in support of the application.
2. By Notice of Acceptance dated 13 November 2019 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned.

3. Intimation of the Case Management Discussion was sent to the Applicants' representative by post and was given to the Respondent by Sheriff Officers on 6 December 2019.
4. The Respondent by Application for a Time to Pay Direction dated 9 December 2019 and received by the Tribunal on 18 December 2019 accepted liability for the claim and offered to make payment to the applicant at the rate of £30.00 per week.
5. The Respondent's application for a Time to Pay Direction was intimated to the Applicants' representative by letter dated 6 January 2020.
6. By email dated 7 January 2020 the Applicants' representative provided a response to the Respondent's application and did not consent to the application.
7. A Case Management Discussion was held at Kirkcaldy on 10 January 2020. It was attended by the Applicants' representative. The Respondent did not attend. The Tribunal held that the Respondent did not have fair notice of the Applicants' refusal of the Time to Pay Order and adjourned the proceedings to a full hearing of the Tribunal.

The Hearing

8. A hearing was held on 21 February 2020 at Fife Voluntary Action, 16 East Fergus Place, Kirkcaldy. The Applicant was represented by Mrs Helen Couser. The Respondent did not attend and was not represented. The Tribunal on being satisfied that proper intimation of the hearing had been given to the Respondent determine to proceed in his absence in accordance with Rule 29 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
9. As liability was not disputed the only issue before the Tribunal was whether to grant or refuse the application for a Time to Pay Order.
10. Mrs Couser confirmed that when management of the tenancy had transferred to her firm on 1 April 2019 the Respondent had arrears of one week's rent but the previous letting agent had then received payment from the Respondent and transferred the funds to her firm. Mrs Couser confirmed that at the end of the lease after Safe Deposits Scotland had credited back the Respondent's deposit the amount due to the Applicants was £974.53.
11. Mrs Couser explained that her clients wished the debt to be repaid as quickly as possible and felt that payment at the rate of £30.00 per week would take too long.
12. The Tribunal noted that the Respondent had not attended the hearing nor provided any more information as to his income and expenditure despite a direction from the legal member at the previous Case Management Direction.

Findings in Fact

13. The Respondent has accrued rent arrears of £974.53 arising from his lease of the property.
14. The Respondent has accepted liability for the debt and offered to repay it at the rate of £30.00 per week.

Reasons for Decision

15. The Tribunal having been satisfied that liability for the debt was not disputed had to balance the ability of the Respondent to pay the debt within a reasonable period of time against the expectation of the Applicant to have the debt paid in full as soon as possible.
16. On the information provided by the Respondent it was apparent to the Tribunal that he could afford to make payment of the debt at the rate of £30.00 per week. At that rate it would take about 32 weeks for the debt to be cleared. In the Tribunal's view that was not an unreasonable period for the debt to be cleared. In addition in the application the Respondent had indicated he may be able to pay a few pounds more at times. It is therefore possible that the debt could be cleared more quickly.
17. As the Respondent has offered to pay by weekly instalments then should he miss two or more instalments the order would if granted revert to an open order leaving it open to the Applicants to proceed to carry out such further diligence as may be open to them.
18. In all the circumstances therefore the Tribunal was satisfied that it would be appropriate to grant the order sought and to grant the Time to Pay Application at the rate of £30.00 per week.

Decision

19. The Tribunal having considered the written representations of the Applicants' representatives and the oral submissions on their behalf together with the Respondent's Application for a Time to Pay Order finds the Applicants entitled to an order for payment by the Respondent in the sum of £974.53 payable under a time to Pay Direction in terms of the Debtors (Scotland) Act 1987 at the rate of £30.00 per week.

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.

Graham Harding

Legal Member/Chair

Date

21 February 2020