



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/19/3427

Re: Property at 184 Balunie Drive, Dundee, DD4 8QE (“the Property”)

Parties:

Mr Keith Donald, Mrs Lorraine Donald, 377 King Street, Broughty Ferry, Dundee, DD5 2HA (“the Applicant”)

Ms Megan Isles, 184 Balunie Drive, Dundee, DD4 8QE (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the Respondent in the sum of £1725.00 with interest at the rate of 4.5% from the date of the Decision until payment.

Background

1. By application dated 24 October 2019 the Applicants’ representatives Baillie Shepherd, Solicitors, Dundee applied to the Tribunal for an order for payment by the Respondent in respect of alleged rent arrears arising from her tenancy of the property. They submitted a copy of the tenancy agreement together with a rent statement in support of the application.
2. By Notice of Acceptance dated 25 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 given to the Applicants' representatives by post on 12 December 2019 and to the Respondent by Sheriff Officers on 13 December 2019.
4. By email dated 13 December 2019 the Applicants' representatives sought to amend the sum claimed to £1725.00 and by email dated 20 December 2019 produced confirmation of intimation of the amendment to the Respondent.
5. By emails dated 23 December 2019 and 8 January 2020 Linda Bulle of Shelter Scotland, Dundee confirmed that she was representing the Respondent and subsequently confirmed that the Respondent did not wish to oppose the application but wished the Tribunal to consider her application for a Time to Pay Direction. Ms Bulle also advised the Tribunal that neither she nor the Respondent intended to attend the Case Management Discussion.
6. By email dated 14 January 2020 the Applicants representatives submitted their opposition to the Time to Pay Direction being granted.

The Case Management Discussion

7. A Case Management Discussion was held at Caledonian House Dundee on 17 January 2020. The Applicant Mr Keith Donald appeared in person and was represented by Mr Ken Glass of Baillie Shepherd. The Respondent did not attend and was not represented. The Tribunal being satisfied that proper intimation had been given to the Respondent determined to proceed in her absence in accordance with The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
8. Mr Glass submitted that given the acknowledgement of the debt by the Respondent both in the email from Ms Bulle and in the application for a Time to Pay Direction the order for payment ought to be granted.
9. The Tribunal noted that the application to amend the sum claimed to £1725.00 had been intimated to the Respondent and allowed the amendment.
10. Mr Glass submitted that the application for a Time to Pay Direction should be refused on the grounds that firstly it would take just less than three years to clear the debt before taking account of any interest. Secondly that the Respondent had indicated in an email to the Applicant dated 13 December 2019 that she had funds in her bank account to pay the arrears in full. Thirdly that as the Respondent was employed by Michelin it was likely she would be made redundant in the near future and would be able to make a payment of the debt from her redundancy payment.
11. The Tribunal referred the Applicant and Mr Glass to the Respondent's application for a Time to Pay direction and to her total lack of income and her very substantial debt and queried in the circumstances how the Respondent would be able to afford to repay the debt at the rate of £50.00 per month. The

Tribunal also noted the Respondent was seeking advice from the Money Advice Service to address her debts.

12. Mr Glass asked the Tribunal to refuse the time to pay application and grant the order for payment with interest as provided for in Clause 7 of the Tenancy Agreement at the rate of 4.5% the base rate of TSB being 0.5%.

Findings in Fact

13. The parties entered into a Private Residential Tenancy Agreement that commenced on 18 February 2018 with a rent of £575.00 per calendar month.
14. The Respondent has accrued rent arrears as at 13 December 2019 amounting to £1725.00
15. The Agreement between the parties provides for interest to be paid on unpaid rent at the rate of 4% above the base rate for the time being of TSB.

Reasons for Decision

16. Given the admissions by the Respondent and the documentary and oral submissions provided by the Applicants' representatives the Tribunal was satisfied that the Respondent had accrued rent arrears amounting to £1725.00 as at the date the claim was amended and that no payments had been made since that date.
17. Whilst a period of three years to clear the debt would have been at the extreme end of what might have been reasonable to allow a Time to Pay Direction it was not at all apparent to the Tribunal that the Applicant was in fact in a position to make payment by instalments of £50.00 per month given her total lack of income and apparently benefits and given the very high level of other debt she had. The tribunal therefore did not consider that it would be appropriate to make a Time to Pay Direction.
18. The Tribunal was satisfied that there was provision within the tenancy agreement for interest to be applied to unpaid rent at the rate of 4% above the base rate of TSB and was satisfied the base rate was currently 0.5%.
19. The Tribunal was satisfied the Applicants were entitled to an order for payment in the amended sum of £1725.00 with interest at the rate of 4.5% from the date of the Decision until payment.

Decision

19 The Tribunal finds the Applicants entitled to an order for payment by the Respondent in the sum of £1725.00 with interest at the rate of 4.5% from the date of the Decision until 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.

Graham Harding

Legal Member/Chair

17 January 2020

Date