

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/19/0355

Re: Property at 52 Howletnest Road, Airdrie, ML6 8AL (“the Property”)

Parties:

Mr Paul McNiven, C/O Atrium Business Centre, North Calden Road, Coatbridge, ML5 4EF (“the Applicant”)

Mr Hing Keung Miu and Ms Kirsty or Pulwat Leung, 52 Howletnest Road, Airdrie, ML6 8AL; 52 Howletnest Road, Airdrie, ML6 8AL (“the Respondents”)

Tribunal Members:

Shirley Evans (Legal Member) and Frances Wood (Ordinary Member)

Decision (in the absence of Mr Miu)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment of ELEVEN THOUSAND THREE HUNDRED AND EIGHTY FIVE PENCE (£11385) STERLING with interest at 5% per annum and a Time to Pay Direction under the Debtors (Scotland) Act 1987. The order for payment with the Time to Pay Direction will be issued to the Applicant after the expiry of 30 days mentioned below in the right to appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by either Respondent.

Background

1. By application dated 14 January 2019 the Applicant’s solicitor applied to the Tribunal for an order for payment of rent arrears of £5425 against the Respondents relating to the tenancy of the Property.
2. On 18 February 2019 The Tribunal accepted the application under Rule 9 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).
3. On 25 March 2019 the Tribunal proceeded to a Case Management Discussion (“CMD”). The Applicant was represented by Ms Barr, his solicitor and Ms Leung appeared personally on her own behalf and on behalf of her

partner Mr Miu. During the course of that CMD Ms Barr submitted that no rent had been paid since 3 March 2018. Ms Leung advised the Tribunal that she and her partner had stopped paying rent as there were various repairs outstanding which the Applicant had refused to carry out. She further explained that there was a Repairing Standard Application before the Tribunal and that a Repairing Standard Enforcement Order (“RSEO”) was sought. She advised the Tribunal that when the repairs were completed she would pay half the arrears immediately and repay the remainder by instalments. She advised the Tribunal that she had kept the withheld rent in a separate bank account. Ms Leung also explained that she had been taking legal advice. The Tribunal adjourned the CMD for possible settlement if the repairs were carried out and a repayment agreement were to be reached between the parties. The Tribunal made a Direction for the Respondents to lodge the bank statements together with a written note of the history of repairs all by 3 June 2019. A copy of the Notes on that CMD are referred to.

4. At the adjourned CMD of the 17 June 2109 the Applicant was again represented by Ms Barr and Ms Leung by Ms Rylatt. Despite the Direction the Respondents had not lodged any bank statements to shown that the rent was being put aside in a separate bank account. Ms Barr explained that no rent had been paid since April 2018 and the arrears had increased to £7425. Her client, she explained, had had difficulties gaining access to the Property to carry out repairs, that the only outstanding repair was a damp stain on the living room ceiling and that there was a suggestion the Respondents had tampered with repairs in order to avoid paying rent. Ms Rylatt explained that her clients had had to rent another property between January – October 2018; that lease was in the name of Mr Miu. She explained there had been issues with the boiler which she claimed her client had had to repair at her own cost as evidenced by various direct debit payments to D&G Repairs. There was still a leak at the Property with some cosmetic issues still outstanding. Ms Rylatt explained she wished to give some thought about her legal position. In the circumstances the Tribunal adjourned the CMD. A copy of the Notes on that CMD are referred to.
5. On 24 June 2019, the Tribunal made another Direction requiring amongst other matters for the Respondent to lodge all bank statements showing the account where the withheld rent was held by 1 July 2019. Both parties were required to provide all documents they wished to rely on in relation to the state of repair of the Property including all reports, orders and correspondence under the Repairing Standard case by 9 August 2019.
6. A third CMD proceeded on 23 August at which point Ms Barr again appeared on behalf of the Applicant and Ms Leung appeared on her own and Mr Miu’s behalf. The Applicant had lodged various documents with regard to the timeline of repairs history and an affidavit from a contractor. Ms Leung had lodged a statement from Barclays Bank which did not show any figure being paid being the equivalent of rent. Ms Leung then explained to the Tribunal that the Barclays’ statements were in the name of a friend who she was paying money to every month and these were the only statements he had given her as the account was not in her or Mr Mui’s name. There was a full hearing on

the Repairing Standards case which was due to proceed on 14 September 2019. Parties were in agreement that arrears had increased to £8890 and accordingly the sum outstanding was amended in terms of Rule 13 of the Regulations. The Tribunal also made findings in fact with regard to Clauses 5, 6, 18 and 33 of the tenancy agreement between the parties. In all the circumstances, the Tribunal continued the matter to a Hearing in terms of Rule 24 of the Regulations.

7. On 12 September 2019 Ms Leung lodged a copy bank statement from the Bank of Scotland.
8. On 28 October 2019, the Tribunal made another Direction requiring amongst other matters for the Respondent to lodge an up to date bank statement by 7 November 2019. As previously both parties were requested to provide a note of any outstanding repairs and lodge all documents they wished to rely on in relation to the state of repair of the Property including all reports, orders and correspondence under the Repairing Standard case by 7 November 2019.
9. Whilst a Hearing was assigned to proceed on 11 November 2019, on the application of Ms Leung, that was discharged due to personal reasons. However, the Tribunal noted once again that neither Respondent had complied with the Direction of 28 October and accordingly issued a further Direction on 29 November 2019 in similar terms for documents to be lodged by 9 December 2019 and reminded the Respondents of their obligations to comply with the Direction in terms of the Scottish Tribunals (Offences in Relation to Proceedings) Regulations 2016.

The Hearing

10. The Hearing proceeded on 16 December 2019. Mr McNiven the Applicant appeared on his own behalf. Ms Leung also appeared on her own behalf. There was no appearance by or on behalf of Mr Miu. Ms Leung explained that she did not represent Mr Mui as he was no longer in the Property.
11. In response to the direction dated 29 November 2019 Ms Leung had lodged a screenshot of a Nationwide account. At the same time she lodged an Application for a Time to Pay Direction under the Debtors (Scotland) Act 1987. The Tribunal had forwarded these documents to the Applicant in advance of the Hearing. The Applicant advised that he was opposed to any Time to Pay Direction being granted.
12. The Tribunal noted that the notification of the Hearing had been sent to Mr Mui on 15 November 2019 by way of Recorded Delivery. The Tribunal had a signed Track and Trace Receipt from the Royal Mail which showed Mr Mui had signed for this letter on 16 November 2019. Accordingly the Tribunal was satisfied Mr Mui was aware that the Hearing had been assigned to proceed on 16 December 2019.

13. At the Hearing parties agreed that the tenancy agreement had commenced on 30 June 2012. The Applicant explained the arrears had increased to £11,385. The arrears were accepted by Ms Leung.
14. Ms Leung advised the Tribunal that the RSEO had been discharged and that everything had been fixed in the Property.
15. On that basis the Tribunal proceeded to consider the Time to Pay Application by Ms Leung. She clarified in response to direct questioning from Ms Wood that her offer to pay £500 per month was in addition to the agreed rent of £495, bringing a total monthly payment of £995. She acknowledged that this was how much she was offering to pay.
16. She explained she had only just started a new job as a carer on a zero hours contract. She was taking a full job load and some days was working from 7 am – 12.30am. She was unable to advise of the amount of her monthly income but explained that last week she had earned about £425 after tax. She also explained she received no other benefits or tax credits and received no financial support from Mr Mui. She explained that her adult son had agreed to contribute £300 per month towards the household. She explained she was working overtime to try to clear her debt.
17. With regard to the bank statement she had produced from the Nationwide she could not explain why that showed a balance of zero when she had paid in £9227.00. She explained that she had to tell the Tribunal that she no longer had all that money and estimated she had about £5000 still left in that Nationwide account. She had no other assets. She accepted that if the Tribunal made an Order against her she would have to pay the Applicant and understood the Applicant's position. She confirmed that as detailed on the Application she had other card debts amounting to about £19,000. However she confirmed there were no arrearments on her wages at the moment.
18. In response Mr McNiven advised that his dealings with the Respondent had shown her to be untrustworthy as she would say one thing on the phone and then do another. He was concerned she had been vague with regard to her circumstances and that as presented the screenshot from the Nationwide only showed a snapshot of the position. He did not believe she or Mr Mui had any intention of clearing the arrears. He explained that this was one of 200 properties that he was involved in and that if the Time to Pay Direction was granted there would be no significant financial impact.
19. With regard to the arrears he requested that the sum be increased to £11385. Ms Leung accepted that. Mr McNiven also looked for interest on the basis of Clause 6 of the tenancy agreement but was not able to advise the Tribunal as to the rate referred to in the Lease being 5% above the Bank of Scotland rate. It was not clear whether this was a variable or a base rate.
20. The Applicant and the Respondents entered into a tenancy agreement of the Property commencing on 30 June 2019. Despite Clause 5 of the tenancy agreement providing that rent of £500 per month be paid, the rent was £495.

21. The Respondents had stopped paying rent in April 2018. No further payments to the rent had been made since then.
22. The Respondents are in arrears of rent of £11385 to 16 December 2019.
23. All repairs at the Property were complete and the Repairing Standard Enforcement Order previously granted by the Tribunal was discharged.
24. Ms Leung had approximately £5000 which she had set aside to clear the arrears. Ms Leung had a new job and was willing to clear the arrears at £500 per month on top of the rent of £495 as per her Application for a Time to Pay Order. Her income was approximately £495 per week after tax. She received £300 per month from her adult son.
25. Mr McNiven would not incur any financial difficulties if a Time to Pay Order were to be granted.
26. In terms of Clause 6 of the tenancy agreement, the Applicant is entitled to interest of 5% per annum above the Bank of Scotland rate from the date the rent is due to date.

Reasons for Decision

27. The Respondents had withheld paying rent whilst there had been outstanding repairs at the Property. The Repairing Standard Enforcement Order which had been granted by the Tribunal was discharged and Ms Leung acknowledged that all repairs had been carried out. The Tribunal was satisfied that it had sufficient evidence from both parties before it to find that there were no outstanding repairs at the property. The Tribunal was satisfied there was no reason for the Respondents to continue to withhold the rent.
28. That being the case the Tribunal was prepared to grant an order for payment of the arrears of rent. Both parties had acknowledged that the arrears had increased to £11385. The Applicant had asked that the sum for arrears be increased to reflect the current arrears. As they were accepted by Ms Leung the Tribunal was of the opinion that there was no prejudice to the Respondents and accordingly allowed the arrears to be increased to £11385 in terms of Rule 13 of the Regulations.
29. The Tribunal noted that parties had agreed by way of the Tenancy Agreement that interest was due at 5% above the Bank of Scotland base rate. However as the Applicant was not able to advise the Tribunal as to whether this was 5% above the base or a variable rate the Tribunal considered it reasonable to grant interest of the arrears from the date of the Order until paid at the rate of 5% per annum.
30. The Tribunal on consideration of Ms Leung's Time to Pay Application and the Applicant's opposition thereto considered that in terms of Section 1 of the Debtors (Scotland) Act 1987 it was reasonable in all the circumstances to grant a Time to Pay Application. In terms of Section 1A of the Debtors

(Scotland) Act 1987 the Tribunal considered now that the repairs were now complete and as the Respondents had put money aside to pay the arrears that it was reasonable for the arrears to be paid. The Tribunal had noted that at the original CMD Ms Leung had stated that once the repairs were complete she would pay half the arrears and the remainder by instalments. The Tribunal considered Ms Leung's financial position and that she had approximately £5000 in a bank account. She had repeatedly advised the Tribunal at previous CMDs that she had more than £5000 in her accounts and even on the basis of the Nationwide statement produced she presented a position to the Tribunal that she had had over £9000 in that account in November 2019 but now only had £5000. The Tribunal felt that Ms Leung had not always been forthcoming with regard to her financial position. On the other hand it noted that the Applicant would not incur any financial implications were a Time to Pay Application be granted.

31. In all the circumstances the Tribunal was satisfied it was reasonable to grant an Order for payment against the Respondents for £11385 with a Time to Pay Direction that the Respondents pay the Applicant £5000 by 23 December and thereafter pay the remainder of the arrears at the rate of £500 per month, the first instalment being due on 30 December 2019, being the date the rent is due. The Tribunal reminded Ms Leung that the payment of £500 was in addition to rent.

Decision

32. The Tribunal granted a payment order for £11385 with interest at 5% per annum until payment with a Time to Pay Direction in terms of Section 1 of the Debtors (Scotland) Act 1987 for the Respondents to pay £5000 to the Applicant by 23 December and thereafter the remainder by instalments of £500 per month, the first instalment being due on 30 December 2019 and monthly thereafter.

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.

S Evans

Legal Member/Chair



Date

16 December 2019.