



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/22/1202

Re: Property at 2A Woodcroft Avenue, Largs, KA30 9EW (“the Property”)

Parties:

Siena Development Ltd, 6 Waterside Street, Largs, KA30 9LN (“the Applicant”)

Ms Alison Doull, 2A Woodcroft Avenue, Largs, KA30 9EW, Mrs Helen Anne Doull, 87 Skelmorlie Castle Road, Skelmorlie, PA17 5AL (“the Respondents”)

Tribunal Members:

Valerie Bremner (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order be made against the Respondent Alison Doull and in favour of the Applicants in the sum of twelve thousand one hundred pounds only (£12100) with interest at the rate of 3% per annum until paid and dismissed the Application against the Respondent Helen Anne Doull.

Background

1. This application for a payment order in terms of Rule 70 of the tribunal rules of procedure was first lodged with the tribunal on 27th April 2022 and accepted by the tribunal on 13 June 2022. A case management discussion was fixed for this application and a related possession order application against Alison Doull only with reference FTS/HPC/EV/22/1200 for 24th August 2022 at 10:00 am.

The Case Management Discussion

2. The applicant did not attend the case management discussion but was represented by Miss Bruce of Complete Clarity solicitors. The Respondent Alison Doull was not present but was represented by Mr Meek of CHAP, a housing and welfare advice charity. The second Respondent Helen Anne Doull did not attend the case

management discussion and was not represented. The Tribunal had sight of an execution of service of the application and supporting papers on her by Sheriff officers and in these circumstances considered that it was appropriate to proceed in her absence given that there had been proper service of the application and papers and fair notice given of the date of the case management discussion.

3. The tribunal had sight of both applications, a paper apart, a rent table, a statement from the Applicant's bank, a notice in terms of section 11 of the Homelessness et cetera (Scotland) Act 2003 together with an e-mail intimating this notice, a Notice to Quit, a Form AT6, a Form AT5, an execution of service in respect of the Notice to Quit and the AT6 and a guarantee agreement.

4. Miss Bruce advised the Tribunal that the applications related to a property owned by the Applicants. This was a company which was essentially set up by her clients a Mr and Mrs Lochhead who set up the company for the sole purpose of property rental to create an additional source of income. The Applicants had entered into a short, assured tenancy with the Respondent Alison Doull on 10th August 2016 to run until 11th February 2017. The tenancy was to continue on a monthly basis after that date if not brought to an end by either party. The monthly rent payable in advance is £650.

5. Miss Bruce had lodged a fresh payment order application dated 18th August 2022 showing that the current rent arrears stood at £12,100 pounds. Only two rent payments had been made since August 2021. Attempts had been made mainly by way of text messages to contact the Respondent Alison Doull during the tenancy when arrears started to build up at the property. E-mail communication had also been attempted. Miss Bruce submitted that communication had broken down or that the Respondent Alison Doull was reluctant to engage or seldom responded to messages. Miss Bruce was seeking to have the new payment order application substituted for the original application to seek an order for the current rent arrears were £12100. She was also seeking interest on any order made at the rate of 3% per annum. until payment was made.

6. Mr Meek who appeared on behalf of the Respondent Alison Doull was instructed not to present any dispute to the payment order being granted. He indicated that the Respondent Alison Doull was receiving assistance from the local authority in being rehomed. Although he had seen the application and papers, he had not seen the new payment order application with the increased sum said to be due by way of rent arrears, but he did not dispute that the current rent arrears stood at £12,100 pounds. Mr Meek had no further instructions and had no further information on the situation other than that which he had given. He did not object to the sum being requested in the payment order being increased to £12100.

7. There was a discussion regarding the position of the second Respondent. Miss Bruce advised that she was the Respondent Alison Doull's mother and had signed the tenancy agreement as a guarantor and had signed a guarantee document which was attached to the tenancy agreement. This required her to pay any outstanding rent due arising from the tenancy and also any losses incurred by the Applicants as a result of the Respondent Alison Doull failing to adhere to her obligations under the tenancy agreement. Helen Anne Doull had signed this agreement which imposed liability for these sums on a joint or several basis.

8. Miss Bruce was also seeking a payment order against Helen Anne Doull in the sum of £12100. The application with this increased amount, dated 18th August 2022, had only been sent to her by the Tribunal on 19th August 2022, just after it was received by the Tribunal. It had been sent by second class post and it was not clear when she would have received this. This lack of notice did not comply with the terms of Rule 14 A of the tribunal rules which required 14 days' notice to be given for an amendment such as the increase to the sum being requested in terms of a payment order. Miss Bruce submitted that the Respondent Helen Anne Doull had chosen not to attend the case management discussion and she would have had at least some notice of the increased sum being requested and could have attended to raise any objections she might have had. Miss Bruce made a secondary motion that if the Tribunal members were not satisfied that the second Respondent Helen Anne Doull had had sufficient notice of the increased sum being requested that she would seek an order in this sum against Alison Doull only and allow the application against Helen Ann Doull to be dismissed.

9. Mr Meek for the First Respondent had no information regarding his client's position as to her guarantor and had instructions only to allow the payment order in the sum of the current rent arrears to be awarded against Alison Doull.

10. The tribunal members considered that they had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

11. The Applicant company entered into a short, assured tenancy agreement with the Respondent Alison Doull on 10th August 2016 to run until 11th February 2017, and to continue after that date on a one month rolling basis if neither party brought to the tenancy to an end.

12. The monthly rent payable in advance for the property under the tenancy agreement is £650 pounds.

13. Rent arrears have accrued during the tenancy and currently stand at £12100.

14. Attempts to engage with the Respondent Alison Doull regarding rent arrears during the tenancy have been unsuccessful.

15. The sum of £12100 of rent arrears accrued in terms of the tenancy is lawfully due by the Respondent Alison Doull to the Applicant company.

16. The Respondent Helen Ann Doull is a guarantor in terms of the tenancy agreement and a guarantee agreement attached to it.

Reasons for Decision

17. The Tribunal members considered that it was appropriate to make a payment order against the Respondent Alison Doull only whose representative did not dispute the level of rent arrears due nor oppose a payment order being made. Given the level of arrears and the failure to engage with the Applicants it appeared reasonable to make a payment order against her. In terms of the second Respondent, it was not clear that she had received any notification of the increased sum being sought by way of the new payment order application and there was nothing before the Tribunal to confirm that she was aware of the up-to-date level of rent arrears. She had not received

appropriate notice of the increase in terms of the sum being sought under the Tribunal rules of procedure. The Tribunal did not consider it appropriate to make a payment order in the increased sum being sought against her given the lack of notice and the fact that she may not know of the increase at all. Given that the Applicant's solicitor had made a secondary motion that the application should be dismissed against her in the event that the tribunal was not satisfied regarding the notice given to her of the increased sum being sought, the Tribunal dismissed the application as regards Helen Anne Doull.

Decision

The Tribunal granted a payment order against the Respondent Alison Doull and in favour of the Applicants in the sum of twelve thousand one hundred pounds only (£12100) with interest at the rate of 3% per annum until paid and dismissed the Application against the Respondent Helen Anne Doull.

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.

V Bremner

Legal Member/Chair

_____ 24.8.22 _____
Date