



**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/21/0199**

**Re: Property at 32 Irving Court, Camelon, FK1 4DU (“the Property”)**

**Parties:**

**Ms Hellen Tulloch, 35 Springfield Crescent, South Queensferry, EH30 9SB (“the Applicant”)**

**Mr Safieholla Salamziy, 32 Irving Court, Camelon, FK1 4 DU (“the Respondent”)**

**Tribunal Members:**

**Jan Todd (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**Background**

1. This was a hearing to consider the application by the Applicant who is the Landlord, for an order for payment of rent arrears from the Respondent who is the tenant in the Property.
2. The following documents were lodged with the Application namely:-
  - i. Tenancy Agreement between the Applicant as Landlord and the Respondent as Tenant dated 24<sup>th</sup> August 2018
  - ii. Rent statement dated to 1<sup>st</sup> January 2020
3. The application was first considered at a case management discussion on 8<sup>th</sup> April prior to which the Tribunal had issued a direction to the Applicant requesting her to lodge evidence as to how she had complied with the Rent Arrears Pre action requirements (Coronavirus) (Scotland) Regulations 2020 in respect of the conjoined eviction action FTS/HPC/EV/21/198.

4. In response to this request from the Tribunal the Applicant's agent lodged a copy of text messages between the landlord's agent and the Respondent and 2 pre-action letters dated January and 16<sup>th</sup> March 2021. In the letter dated 16<sup>th</sup> March 2021 Let Alliance refer to an offer by the Respondent to make a payment and have accepted that offer by the Respondent to pay £200 a month in respect of the rent and rent arrears in addition to the universal credit payment currently being paid towards the rent.
5. At the CMD Miss Mathieson of Bannatyne Kirkwood France Solicitors attended for the Applicant who was not present and the Respondent Mr Salamziy attended in person. Ms Mathieson confirmed that as per the application her client was the landlord and she was seeking an order for payment of the rent arrears that had arisen since April 2020 from the tenant, the Respondent.
6. Ms Mathieson confirmed that an agreement had been reached for the Respondent to make extra payments of £200 per month but advised at the CMD that so far only one payment had been received which was shown on the revised rent statement she had lodged. She confirmed the sum due was now £1781.35 and not what was originally stated in the application, which was £2,190.90. However she advised that as far as she was aware no further payments had been made and that it would be reasonable for the order to be granted today for the revised sum.
7. The Respondent advised that he believed he had made an arrangement to pay the rent and arrears by paying an extra £200 per month along with the universal credit payment of £359.85 per month that he did not agree that the rent statement was accurate and that he had made another payment of £200 as agreed in March and will be about to make another payment in April. The Respondent went on to confirm he had an e-mail from the letting agent Belvoir in February confirming this agreement to pay the rent and arrears by paying an extra £200 a month and that as the arrears were going down he thought that this action would have been withdrawn.
8. The Tribunal then explored with Ms Mathieson, initially in relation to the conjoined action for eviction, the terms of the letter of 16<sup>th</sup> March from Let Alliance to the Respondent which is in terms of a rent arrears pre action letter and which states on page 1 "Based on the information that you have provided and due to the current circumstances caused by the Coronavirus Pandemic I accept your proposals to pay back the arrears in instalments and this is set out in this letter as follows: - **Rent and Rent arrears repayment of £559.85 for each month and due on 1<sup>st</sup>. This is to be made up of Universal Credit payments of £359.85 and a top up payment of £200.**" Ms Mathieson explained Let Alliance was an insurance company with whom the Applicant has a policy but she was not able to confirm the details of any claim or any payment that the Applicant has received from the company although she did indicate that the insurance company may have a right of redress from the tenant if they had paid the arrears or shortfall of any rent. It is noted the offer to pay made by the Respondent has been accepted by a representative of Let Alliance and not the Applicant.

9. The following issues were identified as requiring to be determined at a hearing namely:

- The amount of rent and arrears that had been paid to date and was being paid
- the question of whether there was a payment plan that had been agreed and adhered to by the Respondent
- Whether the Applicant had made a claim against an insurance policy for loss of rent and if so what payments she has received and if she has been reimbursed is she still entitled to any of the rent arrears or has the insurance company met all the losses?

10. To further clarify these matters and to provide evidence for the hearing the Tribunal issued a direction to both parties as follows:-

**The Applicant is required to provide:**

- An up-to-date rent statement dated at least 7 days prior to the hearing showing exactly what has been paid by the Respondent to date*
- The Applicant is required to advise if she or her agents agreed with the Respondent that this action would be withdrawn if he made payment of £200 per month in addition to the universal credit payment*
- The Applicant is required to advise if she has made any claim against loss of rental income insurance and if so what payments she has received and what her actual financial losses are to date arising from arrears the Respondent agrees accrued during the pandemic in order to establish what losses she has incurred and to whom any arrears are due.*
- The Applicant is also required to advise to whom the payment from the Respondent of £200 is eventually paid- is it to herself or the insurance company?*

**The Respondent is required to provide**

- A copy of the email from Belvoir the letting agent, accepting his offer to pay £200 towards the shortfall of rental payment and arrears or any other letter or e-mail he has relating to that offer and any agreement to withdraw this action or the action for payment of rent arrears.*
- Any evidence he has of proof of payment of the sums of £200 he has made.*

11. The Applicant's representative sent an e-mail dated 13<sup>th</sup> May 2021 to the Tribunal advising that she had been instructed to withdraw the application for possession but that she was instructed to proceed with the payment claim only. She also attached a list of witnesses and documentation and advised the productions themselves would be lodged within 7 days of the hearing as the relevant rent was not yet available.

12. She then duly lodged a witness list consisting of Ms Gillian Inglis the Senior Client Finance Administrator at Belvoir Falkirk and Glasgow North and a rent statement dated to 1<sup>st</sup> May 2021.
13. On the 18<sup>th</sup> May 2021 Ms Mathieson lodged a supplementary list of documents which included a rent statement, to 1<sup>st</sup> May 2021; copy of the tenancy agreement, copy policy schedule and policy wording of the Let Alliance insurance policy and copy e-mail from Belvoir the letting agent dated 5<sup>th</sup> February 2021 and 3<sup>rd</sup> Pars letter confirming payment plan. On 21<sup>st</sup> May, Ms Mathieson lodged a further rent statement updated to include a payment made by the respondent on 20<sup>th</sup> May.
14. The Respondent did not lodge any documentation.

### **The Hearing**

15. The hearing proceeded by teleconference at 10am on 24<sup>th</sup> May due to the continuing need for social distancing. Ms Mathieson was in attendance and indicated that Ms Inglis her witness would be available when the Tribunal was ready for her evidence. Mr Salamziy was also in attendance.
16. The Tribunal commenced with the legal member asking Ms Mathieson to clarify who she was acting for as the application has been raised in the name of the Applicant. Ms Tulloch is the landlord but Let Alliance have written to, and from the documentation submitted appear to have accepted an offer to pay rent arrears from, the tenant, the Respondent. Ms Mathieson explained that her firm were in fact engaged by Let Alliance (LA) with who the landlord had an insurance policy to cover loss of rent and that they raise the action on behalf of the landlord. When asked if the insurance company had paid the rent arrears to the landlord Ms Tulloch, Ms Mathieson advised that they had and her witness Ms Inglis would explain how the policy and the payment to cover rent arrears worked. She could not advise to whom the tenant's payment of £200 a month since February 2021 was being paid but said Ms Inglis should be able to explain this. When asked if this action was premature given that the Respondent appeared from the rent statement to be making additional payments towards the arrears in the sum accepted by the Insurance company Ms Mathieson advised that LA wished to get an order for payment so that if the tenant did default they would be able to enforce it and that there had been several months in 2020 where the tenant had not communicated with the letting agent or LA. She advised that it was her submission that the arrears were still due and owing and that the payment plan agreed did not supercede that. In relation to questions about why this application had been brought in the name of the Landlord rather than the insurance company she advised they had the right to do so in terms of the insurance policy and could elect to raise it in the landlord's name. She went on to confirm that the insurance company would not seek to enforce any order unless there was a default by the Respondent on his payment plan and she could seek an undertaking to that effect if required.

17. The Tribunal then asked Mr Salamziy what his position was and the Respondent confirmed he had spoken to the letting agent who confirmed that LA had accepted his offer of payment of £200 per month, that they had said the eviction action would be withdrawn and that he believed if he kept paying nothing would happen. He advised he had paid the extra £200 per month since February and was able to continue paying it.
18. Ms Mathieson then called her witness Ms Gillian Inglis who confirmed that although she is currently the Senior Client Finance Administrator at Belvoir Falkirk and Glasgow North, this is a role she has had for only one month but she had been with the letting agent for 8.5 years and for the previous 2 and half years had been dealing with rent payment and arrears.
19. Ms Mathieson then asked questions relating to the list of documents she had lodged starting with asking Ms Inglis to confirm the details of the tenancy agreement which Ms Inglis did, advising that the Landlord was Ms Tulloch, that Belvoir were the letting agent and the Respondent is the tenant and that the rent due on 1<sup>st</sup> of each month was £435. Ms Inglis confirmed that rent arrears started on 1<sup>st</sup> April 2020 and that the usual procedure when rent arrears occur is for her company to contact the tenant by phone or text within 2 days followed up every 3/5 days and they had done so on this occasion. The first contact being a text to the Respondent on 3<sup>rd</sup> April 2020 followed by another text and e-mail on 7<sup>th</sup> April. She advised he responded on 8<sup>th</sup> April saying he had cash flow issues. Rent was not paid on the following month and she advised he confirmed he was applying for universal credit and she advised that around the middle of June, she made an application online for the universal credit to be paid directly to the letting agent Belvoir as they had had limited contact from the tenant and were not aware of how much was going to be paid or if it would be paid from universal credit.
20. Ms Inglis confirmed that the current rent outstanding as of today was as per the second rent statement lodged by Ms Mathieson namely £1331.65. She confirmed that the universal credit payment of £359.85 has been made to Belvoir since 1<sup>st</sup> July 2021 and therefore the shortfall of rent is £75.15 which is now being covered by the tenant paying £200 to Belvoir. She also confirmed that the payment is made direct by the tenant to Belvoir's client account and that they then pay the £200 to LA as payment towards the arrears and LA pay Ms Tulloch the balance of the ongoing rent due which is £75.15.
21. Ms Inglis explained that the insurance policy is a type taken out by many but not all of the letting agent's landlords but Ms Tulloch agreed to take this policy and it covers the landlord's rent if the tenant fails to pay for up to 6 months. She referred to the policy being between 3 parties the insurance company the landlord and the letting agent. She confirmed that LA have paid Ms Tulloch all the arrears due in full and they are now entitled to the reimbursement.
22. Ms Mathieson directed Ms Inglis to read out two parts of the policy document firstly on Page 48 clause 5 "If You or the Landlord receives payment or part payment of Rent Arrears from the Tenant at any time following the notification

of a claim, We must be notified, and Rent allocated to the earliest Rent Arrears. If payment of Rent Arrears has already been made by Us, You must re-pay the sum received to Us immediately.”

23. And Secondly section 10 of the general conditions which says “ We can take over and conduct in the landlord’s name any claim or legal proceedings at any time and can negotiate any claim on your behalf. If the need arises we or the Appointed lawyer may contact the Landlord directly.”
24. Ms Inglis confirmed that in her view the policy was a contract between the three parties the landlord, the letting agent and LA. She advised that the usual practice regarding a payment plan is that they send one out and if the tenant signs it and then doesn’t comply with the payment plan they would continue with the application for a payment order. She confirmed that if the tenant was in default they would proceed with enforcement.
25. Ms Mathieson then asked Ms Inglis about the timing of the offer to pay by the tenant and Ms Inglis advised that she had sent out rent arrears statements and asked for updates and what he might be able to pay and that she finally got a response in January when the tenant advised he might be able to get money from a relative. She advised by this time he had been sent a notice to leave by LA. Ms Inglis confirmed that LA accepted his offer to pay £200 per month and under further questioning from the Tribunal acknowledged that the Respondent had paid the monthly sums and that LA had accepted his offer. He had not defaulted yet. She mentioned that she presumed this action was to formalise it. She confirmed that the Respondent had not communicated much between April 2020 and January 2021 and she thought that was the reason this action was being taken. She was not sure when the first PARS letter had been sent out but acknowledged the letter from LA dated 16<sup>th</sup> March 2021 did accept the Respondent’s offer to pay and her e-mail to the Respondent confirms this. In response to a question from the Tribunal Ms Inglis advised that she did not know much about discretionary housing payment but would try and assist the tenant to complete an application.
26. The Respondent was then asked for his views. He explained again that he accepted he had rent arrears, he accepted the current rent that was shown on the latest rent statement is correct; that he felt he had communicated with the letting agent when he had something to say to them but that as he had lost his job due to the pandemic and was unable to pay anything more he didn’t have anything else to say. He confirmed he had applied for universal credit but did not know then about discretionary housing payments, and whilst he thinks he made an application he has not heard anything further. He confirmed he had made the offer to pay in January and heard back some time later in March with the acceptance from LA. He agreed that receiving the Notice to Leave had made him more desperate which is when he found a relative to help him pay back the arrears.
27. Finally, Ms Mathieson was asked to make her submissions in relation to the two main issues in relation to this claim for rent arrears namely:-

- i. Was this action competent if the insurance company who have paid the landlord the arrears outstanding and allege they have the right to bring this action in the landlord's name, have agreed to accept an offer of payment in instalments and there has been no default in those payments?
- ii. Is the application raised in the correct name as Ms Tulloch has neither appeared as a witness nor has any authorisation been lodged confirming her agreement to these proceedings?

28. Ms Mathieson's submission is that the arrears of rent are still due and owing and the acceptance of an offer to pay in the sum of £200 per month which allows £124.85 to be paid towards the arrears does not affect the right of the landlord and the insurance company who she advised stand in the landlord's shoes to claim this in full or at the very least to have it formalised in a direction to pay in instalments. She confirmed that in her view the insurance company LA have not waived their right to enforce the debt nor are they personally barred because they only advised in the letting agent's e-mail that if payments were met they may withdraw the eviction action and they did not undertake to withdraw the action for payment. Ms Mathieson wishes to have an order for payment made so that LA can enforce it if and when the Respondent defaults on the payment plan.

29. Ms Mathieson emphasised the evidence given by Ms Inglis that the Respondent had not entered into correspondence with the letting agent or offered to pay prior to January and argued that in those circumstances it was reasonable and appropriate that a formal order for payment of rent arrears be made to the Applicant who if she had to enforce it would then in turn be required to pay it to LA. The Respondent advised he had been unable to pay because of losing his job which arose because of the pandemic and that he got in touch when he did have something to offer otherwise he mentioned just getting rent reminders.

30. With regard to the application being made in the name of the Landlord Ms Mathieson referred the Tribunal to section 10 of the policy which allows LA to raise any application in the landlord's name. Section 10 also allows the Insurance company to negotiate any claim as well.

### **31. Findings in Fact**

- i. The Applicant and landlord, Ms Tulloch entered into a tenancy with the Respondent whereby the Respondent lives in the Property and undertook to pay rent to the Applicant in the amount of £435 per month from 24<sup>th</sup> August 2018.
- ii. The Respondent did not pay rent from 1<sup>st</sup> April 2020 to 1<sup>st</sup> July 2020
- iii. From 10<sup>th</sup> July 2020 to date, he paid a monthly sum of £359.85 to the Applicant via universal credit.
- iv. The Respondent made an offer to the letting agent to pay the balance of rent per month and to pay off the arrears of rent by paying the sum of £200 in addition to the rent paid via universal credit.

- v. The Applicant has been paid the rent arrears by Let Alliance in terms of an insurance policy to protect against loss of rent.
- vi. The insurance company Let Alliance (LA) have accepted the offer to pay the arrears in instalments from the Respondent in a letter of 16<sup>th</sup> March 2021.
- vii. The Respondent has made 4 payments from February to May inclusive of £200 to Belvoir.
- viii. Belvoir have paid this to LA who have in turn paid the balance of rent due on an ongoing basis to the Applicant. They have retained the sum of £124.85 a month towards the arrears.
- ix. The Current arrears are £1,331.65.
- x. A payment plan to pay those arrears off is in place and the Respondent has not defaulted on it to date. If the payments continue the arrears will be repaid in around 10 months.
- xi. The Applicant who is the landlord has received full payment towards the arrears she had from LA.

### **Reasons for Decision**

32. This is a rent arrears application. The Respondent admits he fell into arrears with his rent due to losing his job in the pandemic. The current sum of arrears are admitted namely £1331.65 . The Respondent made an application for universal credit and the letting agent then made a successful application for it to be paid directly to them. That has been in place since July last year.
33. In January 2021 after receiving further letters and a Notice to leave the Respondent made an offer to pay the arrears in monthly instalments by paying a monthly sum of £200 which in addition to the rent paid by universal credit means the rent arrears would reduce by £124.85 a month. The Respondent has confirmed and the Applicant's representative has accepted that he has made all payments to date.
34. It has also become apparent although this was not mentioned anywhere in the initial application, that the landlord is not due and owing the arrears of rent because she has had those paid by an insurance company Let Alliance. The Applicant's representative has confirmed that she is actually instructed by the insurance company LA and that it is the insurance company relying on the terms of the policy and the principle of subrogation that have instructed the action be raised and continued seeking an order for payment for the full sum of current rent arrears.
35. This gives rise to the situation that the landlord is not due any rent as she is currently receiving full rent from the tenant and has received payment of all the arrears from the insurance company LA. The insurance company has a policy which notes the policy holder as Belvoir Letting Agents not the Landlord. Ms Inglis from Belvoir advised it was a policy or contract that was entered into between three parties the letting agent, the insurance company and the landlord. However she advised there is no signature on a policy document but that the landlord would have agreed to this policy however we have seen no evidence of an e-mail instruction or acceptance of its terms.



Notwithstanding this the terms of the policy do allow LA to raise an action. In clause 10 of the general conditions " We can take over and conduct in the landlord's name any claim or legal proceeding at any time and can negotiate any claim on your behalf." Clause 11 goes on to say, " We may make our own investigations into the claim and may attempt to reach a settlement on yours or the landlord's behalf."

36. LA have instructed the raising of the action for rent arrears and eviction based on rent arrears. The eviction action has recently been withdrawn and Ms Inglis when asked, advised she believed this was because they wouldn't be successful in light of the payment plan.

37. This leaves this claim for payment of rent arrears. the Tribunal accept from the evidence presented that the insurance company has the right to pursue this in the name of the Applicant (although the Tribunal would have liked to have heard from Ms Tulloch on this or seen other evidence of her acceptance of the policy and agreement to its terms) the rent was in arrears when the action was raised on 27<sup>th</sup> January 2021. However in response to a pre action letter sent by LA to the Respondent inviting him to work towards a rent arrears payment plan the Respondent did make an offer of payment in instalments. This offer is specifically accepted by LA in their letter of 16<sup>th</sup> March 2021 signed by a Ms Anna Wood for LA. In particular it states,

**" Based on the information you have provided and due to the current circumstances caused by the Coronavirus pandemic I accept your proposals to pay back the arrears in instalments and this is set out in this letter as follows:-**

**Rent and rent arrears repayment of £559.85 per month and due on 1<sup>st</sup>. this is to be made up of Universal Credit payments of £359.85 and a top up payment of £200 until such time as all the rent arrears would be paid off, assuming this plan is adhered to."**

38. This is a clear mutual agreement between LA and the Respondent to meet the rent arrears by making extra monthly payments where LA have agreed to accept payment by instalments. This agreement has been reached after this application was made. Ms Mathieson has submitted this does not preclude them continuing to pursue the Respondent for an order for payment of the full sum and that LA have not waived their right to pursue the full debt. The Tribunal respectfully disagrees. The letting agent who act for the landlord and who entered into the rent arrears policy with LA, have invited the respondent to try and settle the arrears. He made an offer to settle these in January this year by payments in instalments that has been accepted by LA in their letter of 16<sup>th</sup> March and confirmed by the letting agent in their e-mail. Having accepted the offer to pay arrears in instalments this is a new or at least revised contract to pay the rent arrears. The Respondent has duly paid every month from February to date the extra sum of £200. In addition universal credit is still being paid. There has been no default in this arrangement. This action for payment is therefore unfounded or at the very least premature. Ms

Inglis in her evidence admitted that LA would normally pursue enforcement only where the tenant defaulted on the payment plan.

39. The Landlord was owed arrears of rent but the insurance company, who have indemnified her, have themselves accepted a payment plan which they confirm in terms of clause 11 of their policy they are entitled to do on the landlord's behalf and are receiving monthly payments via the letting agent as agreed.
40. Ms Mathieson did submit that if the Tribunal was unwilling to grant an order for the full sum which her client would not then enforce until or unless there was a default by the Respondent she would accept a formal direction to pay in instalments. The Tribunal does not accept that there is a breach of contract at the current time that would merit any order for payment due to the fact LA have accepted an offer to pay in instalments and there is no default in that payment schedule. In addition, the Respondent has not asked for any time to pay direction. The Respondent was also concerned that any order would affect his credit rating.

### **Decision**

41. The Application is refused.

### **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.**

# J Todd

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Legal Member/Chair

24<sup>th</sup> May 2021  
Date