

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/21/2182

Re: Property at 0/1 35 McKerrell Street, Paisley, PA1 1NJ (“the Property”)

Parties:

Mr Gordon Walker, Mrs Sandra Walker, 43 Greenlaw Avenue, Paisley, PA1 3RE; 3A Moss Street, Paisley, PA1 1BG (“the Applicant”)

Mr Robert Lynch, 1/2 17 Seedhill Road, Paisley, PA1 1RT (“the Respondent”)

Tribunal Members:

Yvonne McKenna (Legal Member) and Tony Cain (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for Payment in the sum of £2675 be granted.

Background

1. This is an application in terms of Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). The Applicant is seeking an order for payment of the sum of £2675 in terms of s16 of the Housing (Scotland) Act 2014.

2. Before today’s date the Tribunal had before it the following documents:

a) Application dated 8 September 2021.

b) Tenancy agreement dated 5 November 2014 for a 6 months period until 5 May 2015 and on a month to month basis thereafter.

c) Form AT5 signed by the parties on 5 November 2014.

d) Rent Statement dated 8 September 2021

Case Management Discussion (CMD) 21 January 2022

3. A CMD was held on 21 January 2022 at 2pm by teleconferencing. The Applicant was represented by Mr Nicholson of Penny Lane Homes Ltd. The Applicant did not attend. The Respondent was present. The Respondent did not make representations in advance of the hearing.

4. Mr Nicholson informed the Tribunal that his colleague Mr Wayne Burrows, Manager, had submitted the application but was on annual leave that day. He said that according to the accounting system that the sum of £2675 was still due by the Respondent in relation to arrears of rent. He sought a payment order in that amount. The Property is now back in the possession of the Applicant.

5. The Respondent said that he was willing to pay £1425 only. He said that he had received a generous offer to settle the case on that basis. He had lived at the Property for a period of 7 years. He said that he had experienced personal issues with his father passing away and with the outbreak of the pandemic. He said that if the Applicant was able to accept that offer then he would make instalment payments at the rate of £100 or £75 or £50 per month until this amount was paid .He stated that he had received an e-mail from the Applicant’s Representatives in which an offer had been made to write off the rent arrears and that the

Applicant would assist in speaking to the local authority to secure the Respondent alternative housing. The Respondent said that he had found alternative housing himself. This e-mail he said was dated 26 April 2021 and came from Mr Wayne Burrows.

6. Mr Nicholson said that he was unaware either of this e-mail nor of any prior offers made to the Respondent to settle this case. He suggested that any such e-mail would have been time-sensitive to allow repossession. He said that it was potentially the case that there had been an offer to accept a lesser sum if this was received in a lump sum and by a specific date. He was not in a position to accept the Respondent's offer to settle the action on the basis outlined by the Respondent.

7. The Respondent said that he was not in a position to pay the sum in a lump sum. He said that he had signed a Trust Deed. He did not accept that the sum due by him amounted to £2675. His position was that he accepted he was due rent for June, July, August and September 2021 as well as £25 for May 2021 and £100 for April 2021. He accepted that he was due only the sum of £1425.

8. The Tribunal identified that the following facts could be agreed;-

- The parties entered into a Short Assured Tenancy on 5 November 2014 for a 6 months period until 5 May 2015 and on a month to month basis thereafter.
- An AT5 was signed by both parties on the same date as the lease.
- The rent payments of £325 per month were due in advance each month with the first payment due on 5 November 2014 and thereafter monthly due on the 5th day of each month.
- The Housing and Property Chamber received an Application dated 8 September 2021.
- The Respondent vacated the Property on 6 September 2021.

9. The Tribunal indicated that the Respondent required to set out in his own submissions to the Tribunal what his position was and separate Directions were issued in that regard. The Respondent was required to set out within 14 days his detailed written response to the application. He required to forward to the Tribunal as a production the e-mail dated 26 April 2021 received by him from Mr Wayne Burrows. He required to also provide the Tribunal with detailed information pertaining to rent payments he had made and proof of the same to substantiate his position that only £1425 was due. He required to lodge with the Tribunal a statement of his income and outgoings together with verification of this in order that the Tribunal could consider any instalment payment so offered and whether this was reasonable in light of his vouched financial position.

10. Mr Nicholson said that he anticipated calling only one witness, Mr Wayne Burrows although potentially the Applicant may give evidence. The Respondent said that he would

not be calling any witnesses and it would only be himself who would give evidence on his own behalf.

Hearing 17 March 2022

11. The Hearing on 17 March 2022 was scheduled after the date of the Case Management Discussion (CMD) which took place on 21 January 2022 and was not intimated to the parties orally at that time.

12. The Hearing was held on 17 March 2022 at 10am by teleconference. The Applicants were represented by the Letting Agent Mr Wayne Burrows of Penny Lane Homes Ltd. The Respondent was not present.

13. The Respondent had received the notes from the CMD and the Direction Notice issued that date by recorded delivery mail. He had not complied with the Directions issued by the Tribunal.

14. The intimation of the Hearing was sent to the Respondent by recorded delivery mail. The Tribunal on checking the status of that intimation with Royal Mail was unable to confirm that service was effected. A further Hearing date was required.

15. Mr Burrows said that he had read the CMD Notes that had been issued and that he had copies of the e-mails that the Respondent had referred to at the CMD which he would lodge with the Tribunal as soon as possible. He said that the landlord had offered to write off the rental debts due based on the position that the Respondent missed no further rent payments and left the Property at an allocated date. The Respondent had however continued to occupy the Property after this date and had continued to accumulate further arrears. In relation to the Respondent's suggestion that the Applicants would assist in speaking to the local authority to secure the Respondent alternative housing, Mr Burrows said that the local authority's position was that they could not assist if there were rent arrears.

The Hearing 17 May 2022

16. The Hearing took place by teleconference due to complications caused by the COVID-19 pandemic. The Applicant was represented by Mr Wayne Burrows, Letting Manager with Penny Lane Homes Ltd. The Respondent was also present.

17. The previous request by the Tribunal for service to be effected by Sheriff Officers had not been carried out due to an administrative error. The Respondent had been served with intimation of the Hearing by recorded delivery mail which he had received and signed for on 23 April 2022. He was clearly intimated with the Hearing and was present.

18. The day prior to the Hearing the Applicant had forwarded to the Tribunal a chain of e-mails between Mr Wayne Burrows and the Respondent between 23 August 2021 at 17.03 and 19 August 2021 at 2.03pm. These were circulated to the Tribunal members and to the Respondent in advance of the Hearing. There was no objection to these being lodged by the Respondent.

19. In his opening remarks the Respondent said that he had an email which he had received from Mr Burrows which he also wished to be lodged as a production. This was dated 26 April 2021 at 10.33. This was also circulated to the Tribunal members and to the Respondent and there was no opposition to this by the Applicant.

20. The Tribunal then proceeded to hear evidence.

Evidence of Mr Wayne Burrows

21. Mr Burrows said that he accepted the terms of the e-mail which had been forwarded to the Respondent on 26 April 2021. This was in the following terms;-

"Hi Robert,

Can you please tell me when it is suitable to give you a call.

The landlord has made a very generous offer to write off any arrears accumulated prior to notice being served and has already spoken to the local authority about how best to find new accommodation for you.

Kind Regards

Wayne Burrows"

22. Mr Burrows said that he had never received any acceptance to this communication from the Respondent. He was contacted by the Respondent, to advise that the Respondent's mother was in hospital and Mr Burrows asked him to get back in touch as soon as reasonably practicable. He heard nothing further until August 2021. He then referred to the e-mails which had been exchanged between 19 August 2021 to 23 August 2021.

23. The e-mail of 19 August 2021 2.03pm is an e-mail from Mr Burrows in which he states *inter alia*;-

"We need you to update us on the significant arrears of £2350. How do you intend to pay towards these?"

24. The e-mail sent from Mr Burrows to the Applicant on 23 August 2021 states

"Hi Robert,

Can you advise when you anticipate leaving? The landlord has tried to help you out by offering to write off the arrears prior to notice being given provided that no more payments were missed. You have now not made a payment since May. You are admitting voluntarily not paying so you can save money for your next property while you have been working full time.

Kind Regards

Wayne Burrows"

25. Mr Burrows said that he did not accept that there was a contract in place whereby the Applicant had accepted to waive any rent due prior to the Notice being served. He said that there had been no response by the Respondent to his e-mail of 26 April 2021. For any contract there requires to be an agreement. It is only now once proceedings have been raised before the Tribunal that the Respondent is suggesting that he accepted this offer.

26. He said that the landlord had been as understanding as possible and that he was entitled to look for an award representing the significant of arrears that had accrued. He pointed out that the Respondent had chosen not to pay rent as he was saving his money to put down as a deposit on new accommodation and that other things were more important to the Respondent than paying his rent.

Evidence of the Respondent MR Robert Lynch

27. The Respondent adopted the same position that he had expressed at the CMD. He said that he offered to pay the sum of £1425 and that was because he had received the e-mail from Mr Burrows dated 26 April 2021 which meant that he was not responsible for any rent that had accrued prior to that date. He accepted there was no communication after that date until August 2021. He said, regarding the e-mail of 26 April 2022,

"I'll accept that e-mail. It's a generous offer; of course I'll accept it."

28. He pointed out that the Property was being knocked down now and was in, "a very nasty area of Paisley" which was being rejuvenated. He said that he had signed a Trust Deed and did not have a lot of money.

Findings in Fact

29. The parties entered in to a Short Assured Tenancy on 5 November 2014 for a 6 month period until 5 May 2015 and on a month to month basis thereafter.

30. The Respondent vacated the Property on 6 September 2021 .

31. The rent due in terms of the lease was £325 per month due in advance.

32. The first payment was due on 5 November 2014 and thereafter monthly due on the 5th day of each month.

33. The Applicant's Representative Mr Wayne Burrows sent an e-mail to the Respondent on 26 April 2021 at 10.33 in the following terms

"Hi Robert,

Can you please tell me when it is suitable to give you a call.

The landlord has made a very generous offer to write off any arrears accumulated prior to notice being served and has already spoken to the local authority about how best to find new accommodation for you.

Kind Regards

Wayne Burrows"

34. This offer to abate the rent was not accepted by the Respondent at the time or at any point prior to the Hearing.

35. Mr Burrows sent a further e-mail to the Respondent on 23 August 2021 stating

"Hi Robert,

Can you advise when you anticipate leaving? The landlord has tried to help you out by offering to write off the arrears prior to notice being given provided that no more payments were missed. You have now not made a payment since May. You are admitting voluntarily not paying so you can save money for your next property while you have been working full time.

Kind Regards

Wayne Burrows"

36. There was never any meeting of minds between the parties regarding an abatement of rent.

37. Rent is due and outstanding to the Applicant in the amount of £2675 .

Reasons for Decision

38. The essentials of a valid contract (Cf *Bell Comm I*, 313) are;-

(1) There must be two or more distinct parties;

(2) Each party must, at the time of entering into the obligation, have had legal capacity to make contracts in general, and also had legal power to make a contract of the kind and on the terms in question in the particular case; capacity and power are related but distinct;

(3) The parties must have reached agreement on terms, sufficiently clear and distinct to be understandable and enforceable by a court;

(4) The parties must have intended to bind themselves legally, and to create a legally enforceable obligation, not merely to undertake a social engagement;

(5) The purpose of the contract must have been at the time of making it factually possible of attainment, legally possible of performance, and not objectionable as being either illegal or contrary to public policy;

(6) There need not have been any valuable consideration by one party as the counterpart of the undertaking of the, or an, other party;

(7) The agreement must be formally valid; it must in certain cases have been constituted in particular form and, in certain cases, must, if doubted, be proved by particular evidence only, and in certain cases must be effectuated in particular form;

(8) The agreement must be essentially valid; it must, that is, not have been vitiated by error, whether occurring accidentally or induced by misrepresentation, by force or fear, undue influence or other similar vitiating factors.

39. The difficulty in this case is that there was no *consensus in idem*, (meeting of the minds) between the parties regarding the offer to abate the rent arrears up to 26 April 2022.

40. The Applicant had initially made an offer to abate the rent, this was not accepted and then a further e-mail sent from the Applicant makes it clear that the Applicant's position is that this offer was qualified by the fact that no further rent payments were missed.

41. In order for there to be a valid contract between the parties which over-rides the contractual agreement in the lease to pay rent then certain specifics require to be present in law. For a contract to be valid and enforceable parties must not only have reached agreement, but have reached agreement on reasonably certain and definite terms. If they have not done so they cannot be treated as having reached agreement despite any protestations that they have.

42. The e-mails exchanged in August 2021 demonstrate that the parties have never truly been in agreement.

43. In the circumstances the Respondent cannot rely on the fact that because he received the e-mail of 26 April 2021 that he is entitled to an abatement of all the rent that had accrued up to that date.

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.

Legal Member/Chair

Date

Yvonne McKenna

17 May 2022

