



**Decision made under Section 5(2) of the Debtors (Scotland) Act
1987 by First tier Tribunal for Scotland**

Reference number: FTS/HPC/PY/19/3153

Date Payment Order was granted: 9 August 2019

Parties:

Ms Alison Blane, 3 New Dykes Cottage, Shawfarm Road, Prestwick KA9 1HE ("the Debtor")

Ms Lucinda Ferguson-Hunter, care of 85 Thornyflat Place, Ayr KA8 0NE ("the Creditor")

Tribunal Member: Ms Aileen Devanny (Legal Member)

Decision

The Tribunal refused the application for a time to pay order. The interim order made under Section 6(3) of the Debtors (Scotland) 1987 Act is recalled.

Note of Reasons for Decision

Introduction

On 9 August 2019 the First tier Tribunal for Scotland Housing and Property Chamber ("the Tribunal") made an order for payment requiring the Debtor to pay the Creditor the sum of £1200. The Payment Order arose from an application (Case reference FTS/HPC/PR/19/0625) made by the Creditor under Rule 103 of the Tribunal Procedural Rules for an order for payment where a landlord, the Debtor, has failed to carry out duties in relation to a tenancy deposit.

A. Devanny

Procedural History

An application for a Time to Pay Order was received by the Tribunal on 7 October 2019. Included with the application was a copy of a charge for payment served on the Debtor. On 18 October 2019 the Tribunal considered that the application has been properly made and is competent, and ordered that any diligence be sisted (stopped) until further notice in terms of Section 6(3) of the Debtors (Scotland) Act 1987. This order was intimated to the Creditor and Debtor by letters sent on 22 October 2019 by the Tribunal administration using recorded delivery post.

The Tribunal served a copy of the application on the Creditor and sought the Creditor's response on the Debtor's proposal for payment by installments of £80 per month. The Creditor responded and objected to the proposal and a hearing was fixed for 8 January 2020 and this was intimated to the parties.

In advance of the hearing the Creditor wrote to the Tribunal on 16 December 2019 and indicated that the final payment had been made on the order at the end of November. Clarification was sought by the Tribunal from the Debtor and Creditor on whether the payment order had been satisfied in full and this was confirmed in writing by the Creditor. Whilst the Creditor indicated that the hearing could be cancelled, no such instruction was received from the Debtor and the Debtor indicated that she would be in attendance at the hearing.

The case called at a hearing on 8 January 2020 and neither party was present. A period of 10 minutes was allowed for the late attendance of the parties.

Reasons for Decision

This is a hearing to determine if a time to pay order should be granted. Neither party attended the hearing. It is impossible to justly and fairly determine the application in the absence of evidence and particulars on matters mentioned in Section 2A of the Debtors (Scotland) Act 1987. Furthermore, it appears that the debt has been paid in full. In circumstances where the debt has been paid in full and the Debtor is no longer liable for payment of the sum in the payment order, it is not competent to grant a time to pay order. This is contained in Section 14 (1) of the Debtors (Scotland) Act 1987 which lays down the circumstances where a time to pay order is not competent or no longer effective. Section

7(3) of the Debtors (Scotland) Act 1987 provides that if the First tier Tribunal refuses to make a time to pay order, there shall be recall of any interim order made under Section 6(3) of the 1987 Act.

Appeal provisions

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.

A. Devanny

Legal Member

Date: 8 January 2020