



**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/22/3508

Re: Property at 60 Balgonie Avenue, Glenrothes, Fife, KY7 5DB (“the Property”)

Parties:

**Mr Christian Gachet, Abbey Farm, Macclesfield Road, Chelford, Cheshire, SK11
9AH (“the Applicant”)**

**Mr Andrew Wyse, 60 Balgonie Avenue, Glenrothes, Fife, KY7 5DB (“the
Respondent”)**

Tribunal Member:

Neil Kinnear (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

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

Background

This was an application for a payment order dated 22nd September 2022 and brought in terms of Rule 70 (Application for civil proceedings in relation to an assured tenancy under the 1988 Act) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant sought payment of arrears in rental payments of £3,200.00 in relation to the Property from the Respondent, and provided with his application copies of a short assured tenancy agreement and a rent arrears statement.

The short assured tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 30th November 2022, and the Tribunal was provided with the execution of service.

By letter to the Tribunal dated 13th December 2022, the Respondent advised that he had suffered health difficulties for the previous 12 months which had caused him to fall behind with his rent payments. He advised that he was about to return to work and would then seek to repay his rent arrears.

The Case Management Discussion

A Case Management Discussion was held at 10:00 on 25th January 2023 by Tele-Conference. The Applicant did not participate, and was represented by Mr Brown, solicitor. The Respondent participated, and was not represented.

Mr Brown explained that although sympathetic concerning the Respondent's health difficulties, the Respondent had not made any payments towards rent for nearly one year. Since the application was lodged, further rent arrears had accrued, and those arrears stood at £4,800.00. Mr Brown sought to amend the figure sought to that sum in terms of Rule 14A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Respondent accepted that he had incurred the rent arrears sought, and did not oppose the Applicant's request to amend the sum sought, which amendment the Tribunal allowed.

The Respondent explained that he had suffered a loss of income as a result of his recent health difficulties. He was about to return to work full-time, and wished to repay his arrears over the next few months. He had never accumulated rent arrears before in relation to the Property. He would suffer hardship if the order was granted as he could not afford to repay all of the arrears other than by way of instalments.

The Tribunal explained the procedure involved in making an application for a time to pay direction, and the Respondent indicated that he wished a continuation for the purpose of allowing him to submit such an application.

The Tribunal agreed to continue this matter to a Hearing to allow the Respondent to submit a time to pay direction. If the Applicant confirmed that it agreed to the proposal in the application, it was agreed that Hearing would be discharged and the Tribunal would simply proceed to make an order for payment with a time to pay direction.

The time to pay direction application

The Respondent submitted a time to pay direction application dated 13th February 2023, in which he accepted the sum sought was due by him to the Applicant, and offered to pay in instalments of £1,000.00 per month.

The Applicant submitted a response to the time to pay direction application dated 22nd February 2023 in which he indicated that he was content with the time to pay proposal by the Respondent.

Statement of Reasons

Section 16 of the *Housing (Scotland) Act 2014* provides as follows:

“16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3) Part 1 of schedule 1 makes minor and consequential amendments.”

Accordingly, the Tribunal has jurisdiction in relation to claims by a landlord (such as the Applicant) for payment of unpaid rental against a tenant (such as the Respondent) under a short assured tenancy such as this.

The Tribunal considered the terms of the short assured tenancy agreement, the rent arrears statement, and Mr Brown’s submissions, and was satisfied that this disclosed an outstanding balance due by the Respondent to the Applicant in respect of rent arrears of £4,800.00 as sought. The Respondent accepted that the sum sought was due by him to the Applicant.

Having regard to the acceptance by the Applicant of the proposal in the time to pay direction application by the Respondent, the Tribunal made an order for payment of the sum sought with payment by way of instalments.

Decision

In these circumstances, the Tribunal made an order for payment by the Respondent to the Applicant of the sum of £4,800.00, to be paid by monthly instalments of £1,000.00 until the full amount had been paid.

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.

27-March-2023

Legal Member/Chair

Date