



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) arising from a tenancy under section 32 of the Housing (Scotland) Act 1988 ('the Act').**

**Chamber Ref: FTS/HPC/CV/19/3928**

**Re: Property at 219E Blackness, Dundee, DD2 1RN ("the Property")**

**Parties:**

**Mr Gordon Davidson, 56 Queen Street, Tayport, Fife, DD6 9LQ ("the Applicant")**

**Mr Jamie McMillan, 19 Cedar Drive, Port Seton, Prestonpans, EH32 0SN ("the Respondent")**

**Tribunal Members:**

**Susan Christie (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an Order be granted for payment by the Respondent to the Applicant in the sum of Sixteen Thousand Pounds (£16,000) made with a time to pay direction under section 1(1) of the Debtors (Scotland) Act 1987 at £500 per calendar month until the full amount is paid.**

**Background**

- 1 The Application under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules") was made by the Applicant, received by the Tribunal on 11 December 2019.
- 2 A Notice of Acceptance of Application made under Rule 9 of the Rules is dated 27 January 2020.
- 3 The Application seeks a payment order for unpaid rent due arising from a Short Assured Tenancy between the Parties.
- 4 A Case Management Discussion (CMD) was scheduled for 11 March 2020 at 11.30 a.m. within Glasgow Tribunals Centre, Room 111, 20 York Street, Glasgow, G2 8GT by conference call.
- 5 The Parties were written to by letter on 6 February 2020 intimating the arrangements for the CMD.
- 6 The Respondent was invited to make written representations by 27 February 2020.

- 7 The Respondent submitted a Time to Pay Application to the Tribunal on 6 March 2020.

### **The Case Management Discussion on 11 March 2020**

- 8 The Parties participated in the CMD by conference call. The Applicant was assisted by his Representative, Mr Webster.
- 9 The paperwork submitted along with the Application was examined and considered.
- 10 The Applicant is the registered Landlord of the Property.
- 11 An unsigned Copy Short Assured Tenancy Agreement (SAT) between the Parties accompanied the Application. It contained terms stating that the agreement had been entered into between the Parties over the Property for an initial term of 1 July 2014 to 30 June 2015 and on a monthly basis thereafter until it is terminated. The rent being £540 with the first payment of rent to be paid on 1 July 2015 and in advance on 1st of the month. A copy AT5 was also produced.
- 12 The Application form stated that the SAT started on 1 July 2014 and ended on 5 September 2019. During the tenancy the Respondent accrued substantial rent arrears of £10,800. Prior to leaving the Property the Respondent agreed the figure and a payment plan of £600 per month however only made one payment on 5 August 2019 and had not made any payments since. The Applicant sought £10,200.
- 13 Print outs of the text message exchanges were within the papers submitted.
- 14 The Parties were asked about the SAT and whether the document produced was accurate as to their agreement. There was consensus that it was a copy of the tenancy agreement between them but there was a vagueness surrounding whether there had been more than one signed agreement. It was not disputed that the duration of the tenant's occupation was as stated, or the rent. The end date was not disputed.
- 15 A rent schedule was also within the papers submitted. It showed full details of the rent due from 1 July 2014 to 1 August 2019 and all payments made towards rent during that period. The unpaid rent figure coming out at £21,159. This was substantially different from the sum claimed in the Application form.
- 16 The Parties were asked to comment on the discrepancy between the claimed amount and the amount said to be unpaid in the rent schedule. The Applicant state that he had thought it was £10,800 that was due. He had not received regular copy bank statements and this figure had been suggested by the Respondent and he had accepted that to be the figure when discussing an arrangement to pay. He had subsequently checked the amounts once he had access to online banking and the figure came out much higher as per the rent schedule.
- 17 I asked the Applicant if it was his intention to seek to amend the figure sought in the Application. He wished to seek permission for that, and the view of the Respondent was asked for. I emphasised to both Parties that if they wished to consider their position or reflect on the figures then the CMD could be continued. Both Parties however were keen to have the matter resolved today.

- 18 The Applicant was also seeking a lump sum payment as opposed to a time to pay direction and relied on the failure by the Respondent to maintain the previous arrangement. The Respondent was unable to make a lump sum payment.
- 19 After considerable discussion the Applicant sought a payment Order for £16,000 and was prepared to accept payments of £500 per month. The Respondent was prepared to agree to the sum being amended in the Application today to that amount and agree that was the sum due with the offer of instalment payment. Consensus was reached to enable the decision to be made today. The intention was for the Respondent to make the first payment on 10 April 2020.
- 20 The import of the time to pay direction was also explained.

### **Findings in Fact**

- I. A Short Assured Tenancy was entered into between the Parties for the Property and commenced on 1 July 2014.
- II. The monthly rent being £540 per calendar month payable on 1<sup>st</sup> of the month in advance.
- III. The tenancy ended on 5 September 2019.
- IV. The rent arrears figure agreed between the Parties today is £16,000.
- V. The Parties agreed today that the Respondent be granted a time to pay direction at £500 per calendar month until the sum agreed is repaid in full.
- VI. The Respondent being in arrears of rent as yet unpaid, a payment Order is granted in this Application for the agreed sum of £16,000 with a time to pay direction.

### **Reasons for Decision**

Following upon a detailed discussion today, sufficient facts were agreed between the Parties to allow a Decision to be made by agreement. A compromise was agreed whereby an Order could be made.

### **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.**

Mrs S Christie

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**Legal Member/Chair**

**11 March 2020**  
**Date**