



**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/21/2366

Re: Property at 6 Pinebank, Livingston, West Lothian, EH54 6EU (“the Property”)

Parties:

**Newport Asset Management Limited, Firth Road, Houston Industrial Estate,
Livingston, EH54 5DJ (“the Applicant”)**

**Mr Damien Mrotek, Ms Justyna Hamberg, Unknown, Unknown (“the
Respondent”)**

Tribunal Members:

Ms H Forbes (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for payment should be granted in the sum
of £15,430 with interest thereon at the rate of 3% per annum.**

Background

1. This is an application dated 29th September 2021, made in terms of Rule 70 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”) seeking an order for payment in the sum of £11,175 with interest thereon, in respect of outstanding rent. The Applicant’s representative included with the application a copy of the short assured tenancy agreement between the parties, which commenced on 8th July 2017 at a monthly rent of £575, and a rent statement.
2. Service of the application and intimation of a Case Management Discussion set down for 9th December 2021 was made upon the Respondents by Sheriff Officers on 2nd November 2021.
3. By email dated 9th November 2021, the Applicant’s representative made an application to increase the sum sought to £12,325.

4. A Case Management Discussion (“CMD”) took place by telephone conference on 9th December 2021. The Applicant was not in attendance and was represented by Ms Kirsty Morrison, Solicitor. The Respondents were not in attendance. The Tribunal granted an order for payment in the sum of £12,325 with interest thereon.
5. Following representations from the Respondents, and a response on behalf of the Applicant, the Tribunal recalled the decision of 9th December 2021 by decision dated 3rd April 2022.
6. By email dated 9th June 2022 the Applicant’s representative made an application to increase the sum sought to £15,430.
7. By applications dated 19th June 2022, the Respondents submitted applications for Time to Pay Directions. The Respondent, Ms Hamberg, applied to pay the sum due by instalments of £80 per month. The Respondent, Mr Mrotek, applied to pay the sum due by instalments of £20 per fortnight.
8. By letter dated 8th July 2022, the Applicant responded, opposing the application by the Respondents on the basis that it would take over 10 years to clear the debt due at the proposed sum.

The Case Management Discussion

9. A Case Management Discussion (“CMD”) took place by telephone conference on 20th July 2022. Mr Cameron Scott, Management Accountant, appeared for the Applicant. The Respondents were in attendance.
10. The Tribunal decided to hear from the Respondents first, given the background to the case and the application for Time to Pay Directions.
11. The Tribunal explained the history of the case, and the fact that the original decision had been recalled based on representations made by the Respondents, who now appeared to be admitting the debt was due, as reflected in their applications for Time to Pay Directions.
12. Ms Hamberg took the lead in discussing the case and interpreted for Mr Mrotek. Ms Hamberg clarified that, although the Respondents had previously disputed the debt in their written representations following the decision made at the CMD on 9th December 2021, they do not dispute that the debt is due. They have tried to get legal advice but have not been successful. It was their position that they withheld rent because repairs were required. They felt ignored by the Applicant and hoped that, by withholding the rent, they would force the Applicant to carry out repairs. There had been another case regarding repairs and an inspection, which Ms Hamberg referred to as a court case.
13. Mr Scott clarified that there had been an application to the Tribunal for a Repairing Standard Enforcement Order (“RSEO”), which was put in place in December 2021. It was his understanding that the RSEO had now been

complied with. He said the repairs had not been carried out previously because access had been denied by the Respondents.

14. Ms Hamberg said some repairs were carried out as a result of the RSEO, but there were other repairs required. The Respondents were then evicted from the Property. They could not think about paying the debt at that stage as there was too much going on. They now want to start paying the debt but cannot commit to more than the sums offered at this time. It is her hope that they will be in a position to pay more in due course. They want to pay the debt as soon as possible. They are currently living in homeless accommodation. Mr Mrotek is signed off work and receiving benefits. They do not know how much their rent will be when they get accommodation. Ms Hamberg is paying a large amount for travel to work at the moment, but she hopes to get accommodation closer to her work and save travelling costs.
15. Responding to questions from the Tribunal, Ms Hamberg confirmed that there was some duplication in respect of the entries on the application forms for child maintenance, and the sum for cat food was monthly rather than weekly. There was discussion about the fact that the debt would take over 10 years to pay at the rate being offered. It was the Respondents' position that they hoped to pay more but were not in a position at the moment to offer more. They hoped their financial position would be clearer before too long.
16. Ms Hamberg said they did not refuse access for repairs until the repairing standard case was ongoing, at which time they wanted to wait until the Tribunal had inspected the Property and made a decision. Otherwise, there had never been a problem giving access. They had been asking for repairs since 2016.
17. Mr Scott confirmed the Applicant's position is as set out in the written representations made to the Tribunal. It had been the Applicant's hope that the Respondents would have a lump sum with which they could make payment, having withheld the rent. The Applicant was being reasonable in stating that the debt should be cleared in a period of 3 to 5 years.
18. There was some discussion about whether a hearing would be required to explore matters further and lead evidence, however, parties were clear there was no further evidence to put forward and that a decision could be made at the CMD.

Findings in Fact and Law

19.
 - i. Parties entered into a short assured tenancy agreement in respect of the Property that commenced on 8th July 2017 at a monthly rent of £575.
 - ii. Rent lawfully due in terms of the tenancy was not paid by the Respondents.

- iii. The Applicant is entitled to recover rent lawfully due.
- iv. It is not reasonable in the circumstances to grant a Time to Pay Direction.

Reasons for Decision

- 20. Rent lawfully due in terms of the tenancy agreement between the parties remains outstanding. The Applicant is entitled to recover rent lawfully due.
- 21. The Tribunal carefully considered the Respondents' application, having regard to the following in terms of section 1(1A) of the Debtors (Scotland) Act 1987:
 - 1. The nature and reasons for the debt in relation to which the order is sought.
 - 2. Any action taken by the creditor to assist the debtor in paying the debt.
 - 3. The debtor's financial position.
 - 4. The reasonableness of any proposal by the debtor to pay that debt.
 - 5. The reasonableness of any refusal or objection by the creditor to any proposal or offer by the debtor to pay the debt.
- 22. The Tribunal took into account the representations by the Respondents as to how the debt arose, and the fact that they were withholding rent in order to force the Applicant to carry out repairs. Unfortunately, they do not appear to have taken steps to ensure the withheld rent was available for payment when repairs were carried out. The Respondents now accept that the debt is due and wish to make payment.
- 23. In relation to the Respondents' financial position, the Tribunal noted that Ms Hamberg's income was £1450 per month, and her expenditure was £1925. Mr Mrotek's income was £330 per month, and his expenditure was £925. The Tribunal was not convinced on the information before it, notwithstanding that there may have been some duplication of expenditure in the information provided, that the Respondents could afford the sums proposed at this time. The Tribunal also took into account that the Respondents expect their circumstances to change in the near future, at which time they hope to have a better idea of how much they could realistically pay.
- 24. In terms of reasonableness of the proposal, the Tribunal took into account the fact that the debt would not clear for a period in excess of 10 years, if the applications to pay by instalments were granted.
- 25. The Tribunal considered the objection by the Applicant to be reasonable, given the length of time the debt would take to clear. The Applicant was also

reasonable in stating that they would accept a proposal to clear the debt over 3 to 5 years.

26. In all the circumstances, the Tribunal considered it would not be reasonable to make the Time to Pay Directions based on the sums proposed by the Respondents.

Decision

27. An order for payment is granted in favour of the Applicant in the sum of £15,430 with interest thereon at the rate of 3% per annum running from the date of the decision of the First-tier Tribunal to grant this order

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.

H. Forbes

Legal Member/Chair

20th July 2022
Date