



**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/21/2705**

**Re: Property at 56 Stonylee Road, Cumbernauld, G67 2LT ("the Property")**

**Parties:**

**Ms Catherine Hunter, 2a Westmount Park, Newtownards, Co Down, BT23 4BP ("the Applicant")**

**(First) Mr Gerald James Gray formerly residing at 56 Stonylee Road, Cumbernauld, G67 2LT and whose present whereabouts are to the Applicant unknown and (Second) Mr Kevin Donald, 44 Lochinvar Road, Cumbernauld, G67 4AR ("the Respondents")**

**Tribunal Members:**

**Gillian Buchanan (Legal Member)**

**Decision (in absence of the First Respondent)**

A Case Management Discussion ("CMD") took place on 28 March 2022 by telephone conference. The Applicant was not in attendance but was represented by Ms McMullen of McMullen Law Limited. The First Respondent was neither present nor represented. The Second Respondent was in attendance.

The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules") had been satisfied relative to the First Respondent having received notice of the CMD and determined to proceed in the absence of the Respondent in terms of Rule 29. Reference is made to the Certificate of Service by Advertisement.

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

**Background**

A CMD had previously taken place on 13 January 2022. Prior to the CMD on 13 January 2022 the Second Respondent had submitted a Time to Pay Application under Section 1(1) of the Debtors (Scotland) Act 1987 and dated 9 December 2021 in terms of which he offered to pay the sum claimed by the Applicant, namely £4,739.00 by instalments of £50 per month. The

Applicant had lodged a written response to that application dated 12 January 2022 in terms of which the Applicant accepted the Second Respondent's proposal.

### **The Case Management Discussion**

At the CMD Ms McMullen for the Applicant sought an order against the Second Respondent for payment of £4,739.00 payable by instalments of £50 per month. The Second Respondent did not oppose that order being granted. The Second Respondent indicated that he had already made two payments towards the debt.

Ms McMullen also sought an order against the First Respondent for payment of £4,739.00. Ms McMullen moved for an award of expenses against the First Respondent. The tribunal drew attention to Rule 40 of the Rules and indicated that the First Respondent had not through any unreasonable behaviour in the conduct of the case caused the Applicant unnecessary or unreasonable expense. He had not attended or participated in the proceedings. He had not therefore acted unreasonably.

### **Decision**

The tribunal therefore granted an order against the Respondents jointly and severally for payment to the Applicant of the sum of £4,739 and ordered that the Second Respondent pay that amount by monthly instalments of £50.

### **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.**

Gillian Buchanan

**Legal Member/Chair**

**Date 28 March 2022**