



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016.**

**Chamber Ref: FTS/HPC/CV/22/3910**

**Re: Property at 3 Gartnamore Cottages, 20 Alfred Street, Dunoon, PA23 7NY (“the Property”)**

**Parties:**

**Ms Elizabeth Hartley, 16 Sandy Beach Estate, Hayling Island, Hampshire, PO11 9RG (“the Applicant”)**

**Miss Lauren McMillan, C/o 5 Mallard Lane, Greenock, PA16 7BA (“the Respondent”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order be made in the sum of Five Thousand and Twenty Three Pounds and Thirty Nine Pence Only (£5223.39) against the Respondent and in favour of the Applicant and refused a time to pay Direction application.**

**Background**

1.This application for a payment order in terms of Rule 111 of the Tribunal Rules of procedure was first lodged with the Tribunal on 25<sup>th</sup> October 2022.An amended application was lodged on 21<sup>st</sup> March 2023, and this was accepted by the Tribunal on 18<sup>th</sup> April 2023.A case management discussion was fixed for 16<sup>th</sup> June 2023 at 1130am.

**Case Management Discussion**

2.The Applicant and Respondent attended the case management discussion and represented themselves.

3.The Tribunal had sight of the Application, a rent statement, estimates, a tenancy agreement, a receipt for a deposit, four invoices for work done at the property, a court decree, an exit report, and an email regarding redecoration. The sums being sought in relation to repair, cleaning or redecoration were the sums of £85 for carpet cleaning and deep cleaning of the property, £354 for replacement of carpets, £26.99 for a lock replacement and £177.40 in relation to painting of a bedroom and a repair to a kitchen cupboard. In an email to the Tribunal the Applicant had set out that the property had been left untidy and very dirty and despite deep cleaning, the carpets remained dirty and had an odour and so the carpets required to be replaced. Painting costs were mainly accrued due to test patches having been painted on the bedroom walls which had to be covered over. Repair was also required to a kitchen cupboard. The Respondent Miss McMillan accepted that these sums totalling £183.39 after a deposit of £460 was deducted were due by her in terms of the condition of the property when she vacated it and in terms of the tenancy agreement. Clause 25 of the tenancy agreement required that the property and contents be kept by the tenant in good, clean tenable order and repair.

4.The parties had entered into a tenancy agreement at the property from 28<sup>th</sup> March 2020 with monthly rent payable of £360 and the Respondent had not paid rent due in terms of the tenancy agreement between November 2020 and December 2021 and the rent arrears amounted to £5040. After discussion it was agreed that the total sum being requested by way of a payment order was £5223.39. slightly less than the sum set out in the application.

5.The Tribunal Legal Member discussed the various sums said to be due one by one with the parties and the Respondent accepted that the sums being requested were due by her. The Respondent had submitted an application for a time to pay direction to the Tribunal requesting to pay the debt which she admitted at the rate of £150 per month.

6,There was then a discussion regarding the time to pay application and the matters set out in the Debtors' (Scotland) Act 1987 which the tribunal required to consider in terms of the application.

7.The Respondent indicated that she had lost her job during the Covid period and had only recently been able to start working again in a part time position and was still in her probationary period. She had completed the time to pay direction application form and offered £150 per month towards the debt. Her total outgoings after discussion and including food were agreed to be £695.89 per month, less than was stated on the application form for time to pay and her monthly income including wages and benefits amounted to £1277.29. The Applicant wished to accept the instalment offer.

8.It was agreed between the parties that the debt had been incurred in the main due to unpaid rent during the tenancy and due to some required cleaning, redecoration and repair also required at the end of the tenancy.

9.The Applicant indicated that she had assisted the Respondent and engaged with her in various ways to assist her to repay the rent arrears during the tenancy. She had

suggested that an application be made to the tenant hardship fund to assist with the unpaid rent but felt that the Respondent could have done more to complete the application and ensure it was processed in time. The Respondent considered that she had done all she could to complete the hardship application but by the time her application was approved the scheme was no longer open. Parties agreed that the tenant hardship fund had not made a payment to the unpaid rent in this application.

10. After consideration the Tribunal refused the time to pay Direction application and granted the payment order without any instalment payments in place. The Applicant was concerned as she wished a binding instalment arrangement to be in place. The Tribunal Legal Member explained that the decision did not prevent the parties entering into an instalment agreement outwith the Tribunal and also indicated to parties that the Applicant could take her own advice regarding enforcement of the order and the Respondent could take advice as to whether there were any other steps she could take after the order was in force and the Applicant had started to take legal steps to recover the sums to seek to pay by instalments.

11. The Tribunal was satisfied that it had sufficient information upon which to make a decision regarding the application and that the proceedings had been fair.

### **Findings in Fact**

12. The parties entered a tenancy agreement at the property with effect from 28<sup>th</sup> March 2020 with monthly rent payable at the rate of £360.

13. This tenancy ended at the end of December 2021.

14. Rent arrears accrued during the tenancy between November 2020 and December 2021 amount to £5040.

15. The Respondent required to keep the property in good, clean tenantable order and repair in term of clause 25 of the tenancy agreement between the parties.

16. The Respondent breached this clause of the tenancy agreement and deep cleaning, carpet replacement, repainting and repair to a cupboard were required after the Respondent vacated the property.

17. These additional costs over and above the accrued rent arrears amount to £183.39 after deduction of a deposit of £460 which was paid and recovered by the Applicant.

18. The total sum lawfully due by the Respondent to the Applicant in respect of the tenancy is £5223.39.

19. The Respondent lost her job during the covid 19 period and has recently started to work part time and she is in a probationary period in her employment.

20. The Respondent has free income each month after all her outgoings of £581.40.

## **Reasons for Decision**

The Tribunal member was satisfied that the sums claimed by the Applicant were lawfully due by the Respondent in terms of the tenancy agreement and she did not dispute that at all, having requested a Time to Pay Direction and having admitted the claim in that application. The Tribunal Legal member did not consider that it was reasonable in all the circumstances to make a time to pay Direction in this application. There was no dispute as to how the debt had come about and it appeared that the Applicant had tried to assist the Respondent regarding payment. The Tribunal Legal Member was concerned about whether the instalment payment offered could be sustained given that the Respondent's employment was still in a probationary period and also whether the instalment payment offered was reasonable given the financial circumstances declared and agreed and given that it would take just under three years to pay off the debt at this rate. For these reasons the time to pay direction application was refused, it not being reasonable in all of the circumstances to grant such a direction.

## **Decision**

The Tribunal determined that a payment order be made in the sum of Five Thousand and Twenty-Three Pounds and Thirty-Nine Pence Only (£5223.39) against the Respondent and in favour of the Applicant and refused a time to pay Direction application.

## **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.**

**Valerie Bremner**

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**Legal Member/Chair**

**Date: 16/06/23**