



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 5 Debtors (Scotland) Act 1987 (“the 1987 Act”)

Chamber Ref: FTS/HPC/PY/23/0106

Parties:

George Burnett, Jacqui Skene, Hillhead Farmhouse, Nr Kintore, AB51 0YX (“the Applicants”)

Allison Downie, Thomas Downie, 536 Great Western Road, Aberdeen, AB10 6PG (“the Respondents”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a time to pay order should be granted.

Background

1. The Applicants lodged an application for a time to pay order in terms of Section 5 of the 1987 Act. A Charge for Payment dated 14 December 2022 was lodged with the application.
2. The parties were notified that a case management discussion (“CMD”) would take place by telephone conference call on 14 June 2023. This was postponed and the CMD took place on 22 August 2023 at 10am. Prior to the CMD, both parties lodged written submissions and the Applicants lodged a number of documents Mr Burnett participated on behalf of both Applicants. The Respondents both participated.

Summary of Discussion

3. The Tribunal noted that the Applicants had provided an updated address and requested that this be withheld from the Respondents. The Legal Member advised Mr Burnett that the address would be shown on the documents issued

by the Tribunal, as a valid reason for withholding it had not been provided. Mr Burnett stated that he had only suggested that his address be withheld because he thought that the case would be concluded following the CMD.

4. The Tribunal also noted that the Applicants had offered the sum of £100 per month. This had been rejected by the Respondents who stated that they would accept the sum of £350 per month, based on the information and documents provided in relation to income and outgoings. Mr Burnett said that he could offer £200 per month. Mrs Downie told the Tribunal that they would not agree to an instalment of less than £350.
5. The Tribunal advised the parties that a decision on the application could not be made based on the information and documents submitted. The information was out of date. It included information about rent, Council Tax, and utilities for the Applicant's previous home. Mr Burnett said that they now pay £1600 per month in rent. In addition, the pages of the bank statement which had been submitted had been heavily redacted and it appeared that payments into the account were not disclosed. Mr Burnett told the Tribunal that his stepson pays money into his account which Mr Burnett uses to pay his stepson's bills. The Tribunal also noted that there was no evidence in relation to assets. The parties were notified that the application would proceed to a hearing and a direction would be issued for the documents and information that the Tribunal required to see before making a decision on whether the application was reasonable. The parties were advised that the options available to the Tribunal were to grant the application or refuse it.
6. The parties were notified that a hearing would take place by telephone conference call on the 8 November 2023 at 10am. A direction was issued which required the Applicants to provide a number of documents relating to their income, outgoings and assets. The Applicants did not provide a response to the direction. However, on 14 October 2023, the Applicants submitted a request to amend their offer to £359.02 per month. The Respondents did not provide a response to the increased offer.
7. The case called for a hearing on 8 November 2023. Mr Burnett, Mr and Mrs Downie all participated.

The Hearing

8. In response to questions from the Tribunal, Mr Burnett confirmed that the Applicants wanted to amend the application by increasing the monthly instalment to £359.02. He said that this would result in the sum due (including the Sheriff Officer fee) being repaid in 10 months. He said that he had not provided a response to the direction because the Respondents had stated at the CMD that they would not object to a time to pay order at the rate of £350 per month. Mr and Mrs Downie advised the Tribunal that they did not object to a time to pay order being granted at the rate of £359.02 per month.

Findings in Fact

9. The Tribunal granted an order for payments against the Applicants for the sum of £3463.63 on 17 October 2022 under Chamber reference CV/18/1318.
10. A charge for payment was served on the Applicants on 14 December 2022.
11. The Applicants seek a time to pay order at the rate of £359.02 per month
12. The Respondents do not object to a time to pay order being granted at the rate of £359.02 per month.

Reasons for Decision

13. Section 7(1) of the 1987 Act states, “if no objection is made in pursuance of section 6(6)(a) of this Act, the sheriff or the First tier Tribunal **shall** make a time to pay order in accordance with the application.”
14. The Respondents have intimated that they have no objection to a time to pay order in relation to the amended application. In terms of section 7(1) of the Act, the Tribunal determines that the order shall be granted.

Decision

15. The Tribunal determines that a time to pay order shall be granted and the interim order to sist diligence be recalled

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.

J Bonnar

Josephine Bonnar, Legal Member

8 November 2023