



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)**

**Chamber Ref: FTS/HPC/CV/23/1584**

**Re: Property at 9 (1) Dalry Road, Kilwinning, KA13 7HA (“the Property”)**

**Parties:**

**AT World Invest Ltd, 500 Bourne Business Park, 5 Dashwood Lang Road, Addlestone, Surrey, KT15 2HJ (“the Applicant”)**

**Ms Amanda Lafferty, 24 Winton Court, Ardrossan, KA22 8HZ (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment against the Respondent in favour of the Applicant in the sum of £1,748.63 be made.**

**Background**

1. By application received on 17 May 2023, the Applicant sought a payment order in the sum of £1,748.63 against the Respondent in respect of rent arrears arising from a former tenancy of the Property amounting to £1,598.63 plus £150 for the costs of a new lock, all in terms of Rule 111 of the Regulations.
2. Supporting documentation was submitted in respect of the application, including a Rent Statement and a copy of the Tenancy Agreement.
3. Following initial procedure and the lodging of further documentation by the Applicant, a Legal Member of the Tribunal with delegated powers from the Chamber President subsequently issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations on 26 September 2023. A Case

Management Discussion (“CMD”) was assigned for 28 November 2023 but was subsequently postponed to 31 January 2024, due to difficulties serving the paperwork on the Respondent, due to her moving address. Service by way of Advertisement on the Tribunal website was arranged and contact was subsequently made by the Respondent who was issued with case papers and details of the CMD.

4. On 29 January 2024, CHAP emailed the Tribunal on behalf of the Respondent, confirming their instructions to attend the CMD on her behalf and submitting a completed Time to Pay application offering payment at the rate of £25 per month. This was circulated to the Applicant’s representative on 30 January 2024 who emailed a Response Form to the Tribunal Administration, circulated on the morning of the CMD, once the CMD had started, rejecting the Time to Pay application made by the Respondent.

### **Case Management Discussion**

5. The CMD took place by telephone conference call on 31 January 2024 at 10am. The Applicant was represented by Ms Annette Weston, Lettings Manager of Corbet & Shields, the Applicant’s letting agent and the Respondent by Mr Alister Meek of CHAP.
6. After introductions and introductory remarks by the Legal Member, Mr Meek was advised of the recent circulation of the Applicant’s response to the Time to Pay application, which he confirmed he had seen.
7. Ms Weston addressed the payment application and confirmed that an order for payment in the sum of £1,748.63 was still being sought. The Legal Member noted that the Respondent had indicated in the Time to Pay application that she admitted the debt but asked the Ms Weston some questions in order that the Tribunal could ascertain whether it was appropriate for a payment order to be granted in the sum sought.
8. Ms Weston confirmed that the Respondent had vacated the Property around May 2023 and that this ties in with the most up to date Rent Statement submitted in support of the application which had the last entry for rent due shown as 27 May 2023 and showed the arrears balance of £1,598.63. The £150 claimed in the application for the new lock was not already shown in the Rent Statement (although it also showed some charges for other repair items) and so has not already been included in the £1,598.63 figure. The deposit of £500 paid by the Respondent at the start of the tenancy and shown in the statement as having been lodged with a tenancy deposit scheme was recovered by the Applicant in full following the end of the tenancy and was used to pay for other repair issues, including a back fence, gate and lamp damaged by the Respondent. The £500 should not accordingly be deducted from the overall figure claimed. The Respondent had not challenged the return of the deposit to the Applicant through the deposit scheme mechanism. As to the reason stated for some of the rent arrears by the Respondent in her Time to Pay application, namely that she had had to pay to replace certain items of furniture due to damp

and mould which had not been attended to by the Applicant, this was disputed by Ms Weston. She explained that they always actioned necessary repairs immediately and that she had visited the Property following a complaint by the Respondent of damp and mould. Ms Weston stated that none was visible and that the Respondent explained that she had cleaned it off and had already replaced the furniture affected. Ms Weston stated that she had advised the Respondent of the proper procedures to follow if raising such complaints, such as taking photographs as evidence before disposing of the evidence. Mr Meek conceded that this issue could not be advanced further by the Respondent and that he had advised her accordingly.

9. Ms Weston then confirmed the Applicant's position in respect of the Time to Pay Application. The main reason for rejecting the £25 per month offer is the length of time it would take to pay off the debt at this amount, namely over 5 years. She also wondered if the figures stated in the income and expenditure details document had been verified by CHAP, such as, for example, the mobile phone costs claimed. She stated that the background is also relevant to the Applicant's position, as they were in constant contact with the Respondent during the tenancy and several payment plans were put in place which were not then adhered to. Ms Weston stated that the Respondent had been working as well as being in receipt of benefits at that time. She was asked if any instalment amount would be acceptable to the Applicant and she responded that the Applicant would accept around £150 per month.
10. Mr Meek stated that it was not possible for the Respondent, given her financial position, to pay as much as £150 per month. He stated that the figures provided by the Respondent had not been verified as CHAP had been instructed at short notice. He confirmed that the Respondent now resides in a Council house and has two dependent children residing with her. He commented that, if there was to be some deduction from the Respondent's benefits in respect of this debt in due course, it was unlikely that this would be any higher than the £25 per month offered.
11. Ms Weston said that she appreciated that, if the figures claimed by the Respondent are correct, then it was unlikely that she could pay an amount as high as £150 per month, but that they would require to see some verification of the figures before agreeing to a lower sum. In the circumstances, the Applicant would request that the Time to Pay application be refused and a payment order in the full amount granted today.
12. The Legal Member advised that, having considered the matter, the Time to Pay application was refused and that an order for payment in the full sum of £1,748.63 would be made. The Legal Member explained that it would still be open to parties to negotiate an instalment payment arrangement in respect of the outstanding sum but that this would not involve the Tribunal. Parties were thanked for their attendance and advised that the decision paperwork would be issued shortly.

## **Findings in Fact**

1. The Applicant is the owner and former landlord of the Property.
2. The Respondent was the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 2 May 2022.
3. The rent in terms of the tenancy was £500 per calendar month.
4. The Respondent vacated the Property around May 2023.
5. Rent arrears had accrued during the tenancy and amounted to the sum of £1,598.63 when the Respondent vacated.
6. The Applicant's agent had sought to engage with the Respondent throughout the tenancy concerning the arrears but payment arrangements entered into were not adhered to by the Respondent.
7. The Applicant had also incurred a cost of £150 for a replacement lock, for which the Respondent was responsible.
8. The total sum of £1,748.63 is due and resting owing by the Respondent to the Applicant.
9. The Respondent admits the claim in terms of her Time to Pay Application submitted to the Tribunal.
10. The Respondent offered to pay the amount outstanding at the rate of £25 per month in terms of the Time to Pay Application which was not accepted by the Applicant.

## **Reasons for Decision**

11. It was noted that the Respondent did not dispute the amount of the Applicant's claim. The Legal Member was therefore satisfied that the application did not require to be continued on to an Evidential Hearing.
12. The Legal Member was further satisfied from the information contained in the application and supporting documentation, together with the oral submissions made by the Applicant's representative at the CMD, that the sum claimed of £1,748.63 was due and resting owing by the Respondent and that an order for payment in that sum could properly be made.
13. Having considered the information contained in the Time to Pay application submitted by the Respondent and the Response Form, together with the oral submissions made by both the Applicant and Respondent's representatives today, the Legal Member was not satisfied that it would be reasonable in all of the circumstances to make a Time to Pay Direction in terms of the Debtors (Scotland) Act 1987, as amended, allowing the Respondent to pay the amount

due by instalments of £25 per month. Accordingly, the Legal Member refused the Time to Pay application. In doing so, the Legal Member had regard to the factors listed in Section 1A of the 1987 Act. The Legal Member took into account the information the Respondent had provided regarding her finances but considered that this was outweighed by the fact that it would take over 5½ years for the debt to be cleared at the rate offered and that the Respondent had not maintained previous payment arrangements entered into during the tenancy.

## **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.**

# N Weir

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Legal Member/Chair

31 January 2024  
Date