



**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 and section 1 of the Debtors (Scotland) Act 1987**

**Chamber Ref: FTS/HPC/CV/24/2099**

**Re: Property at 56 Barclay House, West Langlands Street, Kilmarnock, KA1 2PR (“the Property”)**

**Parties:**

**Kiln Holdings Ltd, Andrew Barclay Heritage Centre, West Langlands Street, Kilmarnock, KA1 2PY (“the Applicant”)**

**Mr Tahir Khaliq, Flat 2/2 134 Maryhill Road, Glasgow, G20 7QS (“the Respondent”)**

**Tribunal Members:**

**Mary-Claire Kelly (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for payment in the sum of TWO THOUSAND SIX HUNDRED AND TWENTY-EIGHT POUNDS AND FIFTY-TWO PENCE (£2628.52)**

**Background**

1. By application received on 24 May 2024 the applicant seeks an order for payment in respect of rent arrears.
2. The applicant lodged the following documents with the application:
  - Copy tenancy agreement
  - Rent account for the duration of the tenancy

- Charge for payment of money dated 9 April 2024
  - Copy of decision in case reference FTS/HPC/CV/23/3641
3. By email dated 26 August 2024 the respondent submitted an application for a time to pay direction.
  4. A case management discussion was scheduled for 1 October 2024.

#### **Case management discussion (“cmd”) – teleconference – 1 October 2024**

1. The applicant was represented by Ms Dickie, letting agent from Ardanach Letting Ltd. The respondent was not present or represented. The Tribunal was satisfied that the respondent had received proper notice of the cmd and proceeded with the cmd in their absence in terms of rule 29.
2. Ms Dickie sought an order for payment in the sum of £2628.52. The lease which had been lodged had a commencement date of 1 December 2021 and showed that the monthly rent due was £630. A rent ledger had been lodged which spanned the period from the commencement of the tenancy to April 2024.
3. Ms Dickie stated that no rent had been received since February 2022. She explained that eviction proceedings had been raised against the respondent. An order had been made and the respondent had moved out of the property in April 2024. A previous application had been lodged seeking a payment order in respect of rent arrears due up to the 13 October 2023. That application had been unopposed. An order for payment had been made in the sum of £7690.
4. The present application related to the period between 13 October 2023 and April 2024 when the respondent moved out of the property.
5. Ms Dickie opposed the time to pay direction application submitted by the respondent. She explained that she had no faith that the respondent would adhere to any repayment arrangement based on his conduct to date. In particular she stated that she had made numerous efforts to enter into repayment arrangements with the respondent. She advised that on at least 3 occasions an agreement had been made which the respondent had subsequently defaulted on. Ms Dickie also stated that as far as she was aware the respondent had been in employment when he moved into the property. He had advised her that at times he had worked on a freelance basis. Ms Dickie was also aware that the respondent had made a claim for universal credit

including housing costs during the tenancy, however, he had not made any payment towards his rent from the benefits received.

6. Ms Dickie advised that a charge for payment had been served on the respondent in relation to the previous order for payment obtained against him. She stated that this may explain why he had submitted the application for a time to pay direction. She stated that the respondent had contacted her to offer £500 per month and stated that the first payment was due by the end of September. She had not received any confirmation from the landlord as to whether that payment had been made.
7. Ms Dickie stated that if the respondent maintained payments of £500 per month then it may be that no enforcement action would be necessary however, given the level of debt and his previous conduct the applicant sought the certainty of a repayment order in the full amount.

### **Findings in fact**

8. Parties entered into a tenancy agreement with a commencement date of 1 December 2021.
9. Monthly rent due in terms of the agreement was £630.
10. The respondent moved out of the property on 26 April 2024.
11. Total rent unpaid at the date the respondent moved out of the property amounted to £10,318.52.
12. The First-tier Tribunal made an order for payment in the sum of £7690 under application reference FTS/HPC/CV/23/3641 for arrears due up to 13 October 2023.
13. Arrears of rent between 13 October 2023 and 26 April 2024 amounted to £2628.52.
14. The applicant's representative made numerous attempts to enter into a repayment arrangement with the respondent.
15. The respondent failed to adhere to any repayment arrangements during the tenancy period and subsequent to his leaving the property.

### **Reasons for the decision**

16. The Tribunal had regard to the application and the documents lodged by the applicant and Ms Dickie's oral representations at the cmd.

17. The Tribunal considered the terms of the application for a time to pay direction submitted by the respondent.

18. Section 1 of the Debtors (Scotland ) Act 1987 states:

*(1) Subject to subsections (3) to (5) below and to section 14 of this Act, on an application by the debtor, the court or the First-tier Tribunal on granting decree for payment of any principal sum of money, shall, if satisfied that it is reasonable in all the circumstances to do so, and having regard in particular to the matters mentioned in subsection (1A) below, direct that any sum decerned for in the decree (including any interest claimed in pursuance of subsections (6) and (7) below) or any expenses in relation to which the decree contains a finding as to liability or both such sum and such expenses shall be paid—*

*(a) by such instalments, commencing at such time after the date of intimation by the creditor to the debtor of an extract of the decree containing the direction, payable at such intervals; or*

*(b) as a lump sum at the end of such period following intimation as mentioned in paragraph (a) above,*

*as the court or the First-tier Tribunal may specify in the direction.*

*(1A) The matters referred to in subsection (1) above are—*

*(a) the nature of and reasons for the debt in relation to which decree is granted;*

*(b) any action taken by the creditor to assist the debtor in paying that debt;*

*(c) the debtor's financial position;*

*(d) the reasonableness of any proposal by the debtor to pay that debt; and*

*(e) the reasonableness of any refusal by the creditor of, or any objection by the creditor to, any proposal by the debtor to pay that debt.*

*(2) A direction under subsection (1) above shall be known as a "time to pay direction".*

19. In terms of the written time to pay application the respondent accepted liability for the amount sought and offered to repay the outstanding amount at the rate of £500 per month. The respondent stated that he currently worked on an agency basis as a graphic designer. His income is £630 per week. His stated monthly outgoings were £1150. The financial position as set out by the respondent would enable him to maintain payments at the proposed rate. The Tribunal noted that the proposed payment rate would repay the outstanding amount within 6 months which was a reasonable period.
20. The Tribunal noted that in the time to pay application the respondent stated that he had fallen into arrears as he was experiencing a period of unemployment. He also stated that he had experienced relationship breakdown which had impacted his mental health.
21. The Tribunal had sympathy with the personal circumstances described in the application for time to pay. However, the Tribunal found Ms Dickie's arguments against a time to pay direction to be persuasive. In particular Ms Dickie stated that whilst the respondent had been unemployed he had still been receiving benefits, including housing costs which he failed to pay towards the rent. She also stated that as far as she was aware the respondent was working freelance during some of the periods when arrears built up however, he failed to make any payments towards the rent since February 2022.
22. The Tribunal gave particular weight to the information provided by Ms Dickie that she had sought to engage with the respondent on multiple previous occasions to enter into repayment arrangements however he had consistently failed to do so. Given the conduct of the respondent the Tribunal noted that the applicant had lost faith in the respondent maintaining payments and considered it reasonable that the applicant opposed further time to pay.
23. The Tribunal took into account that the respondent had failed to attend the cmd. The respondent accepted liability. The Tribunal considered that it had sufficient information to allow it to determine the application for time to pay,
24. Taking into account the matters set out in section 1 of the Debtors (Scotland) Act 1987 the Tribunal did not consider it reasonable in the circumstances to grant a time to pay direction. The Tribunal noted that Ms Dickie stated that if an order in the full amount was made, the applicant would still be amenable to negotiating with the respondent regarding a suitable repayment rate which may avoid further enforcement procedure.

## **Decision**

**The Tribunal determined to grant an order for payment in the sum of TWO THOUSAND SIX HUNDRED AND TWENTY-EIGHT POUNDS AND FIFTY-TWO PENCE (£2628.52)**

### **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.**

# **M-C.Kelly**

**Legal Member/Chair**

**1 October 2024  
Date**