



**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/20/0309

Re: Property at 7 Stewart Crescent, Newmains, ML2 9DH (“the Property”)

Parties:

**Ms Mussarat Khalida, 20 Beltonfoot Way, Wishaw, North Lanarkshire, ML2 0GA
 (“the Applicant”)**

**Miss Kimberley Yule, Ms Elizabeth McWhinnie, 3 Dornie Path, Newmains,
North Lanarkshire, ML2 9HP; Burncrooks Farm, Hamilton, ML3 9PS (“the
Respondent”)**

Tribunal Members:

Mary-Claire Kelly (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined to grant and Order for payment of the sum of £3880.06.
The Tribunal made a time to pay direction under Section 1(1) of the Debtors
(Scotland) Act 1987 requiring the respondents to pay instalments of £300 per
month until such time as the debt is repaid.**

Background

1. By application dated 28th June 2020 the applicant sought an order for payment in the sum of £3880.06 in respect of rent arrears, interest and costs relating to the submission of the application. The case was heard together with an application seeking an eviction order in respect of the same property under reference FTS/HPC/EV/20/1328
2. The applicant submitted a copy lease, guarantors agreement, rent account and rent increase agreement in support of her application.
3. A case management discussion was scheduled for 24th August 2020. A completed time to pay application dated 13th August 2020 was received from Miss Yule. Miss Yule accepted liability for the debt and proposed to repay the

sum at the rate of £50 per month. This was crossed over to the respondent who notified the Tribunal that she was not prepared to accept the offer.

4. Shortly before the cmd Ms McWhinnie submitted a time to pay application. There was insufficient time to forward this to the respondent prior to the cmd.

Case Management Discussion

5. At the cmd on 24th August 2020 all parties were present. Both respondents accepted liability for the full amount sought by the respondent.
6. The Tribunal had regard to the terms of Section 1A of the Debtors (Scotland) Act 1987 which sets out the factors it requires to take into account in determining a time to pay application namely:

- (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.*

7. The Tribunal heard from Ms Yule in relation to her application for time to pay. The Tribunal noted that Ms Yule had gotten into difficulties paying her rent when her benefits stopped. She had undertaken a course in Beauty at New College in Lanarkshire. During the last year of her studies she received a student loan and lost her entitlement to benefits. She struggled financially as a result and was unable to pay her rent. She advised that she is a single parent with two children. She advised that her sole income at present was £756 per month from a student loan and Child Benefit of £151 per month. She advised that she moved out of the property on 10th July 2020 into a council tenancy. Miss Yule confirmed the figures in her application as being accurate and advised that £50 per month was the most she could afford to pay without experiencing financial hardship.
8. Parties confirmed that Ms McWhinnie had been a guarantor in terms of the lease and a separate Guarantor agreement which had been signed at the commencement of the lease. Ms McWhinnie is Miss Yule's mother. Ms Whinnie had submitted a time to pay application prior to the cmd but this had not been sent to the applicant. The Tribunal advised parties that the terms of the application could be discussed at the cmd however, if the applicant wished further time to respond and consider her position an adjournment could be granted for that purpose.
9. The Tribunal read through the application received from Ms McWhinnie and ensured that the applicant was made aware of the full terms of the application and Ms McWhinnie's financial statement.
10. Ms McWhinnie advised that she had been unaware of the existence of any rent arrears until the Tribunal papers had been served on her. She advised that she had been diagnosed with breast cancer and had undergone treatment in 2019. She advised that Miss Yule had not made her aware of her financial difficulties as she had not wanted to cause her stress during a period of ill health. She

- advised that she was employed as a HGV driver by Royal Mail. Her income from employment was £2,000 per month. She had noted her various outgoings on the time to pay application. Her total monthly outgoings amounted to £1729.
11. McWhinnie confirmed that she lived with a partner with whom she split household costs 50:50. She advised that each paid half the mortgage costs however, she paid all grocery costs whereas her partner covered the utility bills and council tax. This explained the figure of £500 per month food cost and the lack of any utility or council tax expenses in her application.
 12. The Tribunal sought the applicant's position as to whether a joint proposal of £250 per month was acceptable to her. The applicant advised that it was not. The applicant drew the Tribunal's attention to an offer which had been made by Ms McWhinnie's partner, Ronnie Walker to make a payment of £3000 together with the deposit of £475 in an email sent on 18th August 2020. The applicant had rejected that offer, but it was her position that it demonstrated that the respondents were in a position to make payment of the lump sum due. She also queried the figures in McWhinnie's application, particularly the amount shown for food.
 13. Ms McWhinnie advised the Tribunal that the proposal made by Mr Walker had been on the condition that she and her daughter would have to repay the money to him over time. She confirmed that she did not have any lump sum available to pay to the Tribunal and that she would have to take a loan to repay the amount being sought.
 14. Parties gave conflicting accounts of efforts to resolve the issue of arrears via WhatsApp messages and in particular the timing when parties sought to reach an agreement regarding repayment. The applicant advised that she had sought to discuss the arrears with Miss Yule in November 2019 however, she had not received a response. Miss Yule advised that she had contacted the applicant in May 2020 to reach an agreement. Communication between parties had become difficult and no resolution was reached.

Findings in Fact

15. The applicant and Miss Yule entered into an assured tenancy agreement with a commencement date of 26th May 2016.
16. Ms McWhinnie was a guarantor in terms of the tenancy agreement and jointly and severally liable for any sums outstanding in terms of the agreement
17. The respondents accept liability for the sum of £3880.06 sought by the applicant in respect of unpaid rent, interest, sheriff officers fees and the costs

Reasons for the decision

18. The Tribunal had regard to the terms section 1A of the Debtors (Scotland) Act 1987, set out at paragraph 6 above. The Tribunal noted that the arrears had built up due to Miss Yule enrolling as a student and a consequent loss of benefits. The Tribunal accepted Miss Yule's evidence that she chose not to tell McWhinnie of her financial difficulties due to the latter's health difficulties. This meant that Ms McWhinnie, the guarantor had only become aware of the rent arrears at the date the present application was served on her. The Tribunal noted that the offer of £250 would repay the arrears within 16 months. The Tribunal took into account Miss Yule's financial statement which showed that she had a low income with £108 disposable income per month after all

necessary costs. The Tribunal had regard to Ms McWhinnie's financial statement which showed that she had £246 disposable income per month after necessary costs. However, the Tribunal noted that the figure of £500 per month for food and the figure for "car insurance, tax, running costs, clothing and essentials" of £325 were generous. The Tribunal accepted the respondent's evidence that the lump sum that had previously been offered by Mr Walker was not McWhinnie's money and would in effect be a loan to her and her daughter. The Tribunal had sympathy with the applicant's position and her wish to have the debt repaid as early as possible,

19. Taking the above matters into account the Tribunal determined to grant a time to pay direction requiring the respondents to repay the outstanding sum at the rate of £300 per month which would repay the outstanding amount within 13 months.

Decision

The Tribunal determined to grant an order for payment of the sum of £3880.06 with a time to pay direction in terms of the Debtors (Scotland) Act 1987 requirement monthly instalments of £300.

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.

Mary-Claire Kelly

Legal Member/Chair

24th August 2020
Date