



**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/19/2102

Re: Property at Flat 2/3, 6 John Street, Hamilton, ML3 7EU (“the Property”)

Parties:

**Mrs Jennifer Robb, C/O Happy Lets, 56 Cadzow Street, Hamilton, ML3 6DS
 (“the Applicant”)**

**Mr John Winterburn, Flat 2/3, 6 John Street, Hamilton, ML3 7EU (“the
 Respondent”)**

Tribunal Members:

Graham Harding (Legal Member) and Leslie Forrest (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
 Tribunal”) determined that the Applicant was entitled to an order for payment
 by the Respondent in the sum of £1400.00 at the rate of £50.00 per calendar
 month.**

Background

1. By application dated 3 July 2019 the Applicant's representatives Happy Lets, 56 Cadzow Street, Hamilton applied to the Tribunal for an order for payment in respect of alleged rent arrears said to be due by the Respondent in respect of his tenancy of the property. The applicant's representatives submitted a copy of the tenancy agreement and a rent statement in support of the application.
2. By Notice of Acceptance dated 9 August 2019 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned.

3. Intimation of the Case Management Discussion was given to the Applicant's representatives by post on 16 August 2019 and to the Respondent by Sheriff Officers on 19 August 2019.
4. The Respondent submitted a time to pay application under the Debtors (Scotland) Act 1987 in advance of the Case Management Discussion.
5. A Case Management Discussion was held at Glasgow Tribunals Centre, Glasgow on 24 September 2019 and was attended by the Applicant's representative Mrs Lesley Barclay. The Respondent was not present and was not represented. The Tribunal continued the case to a hearing of the Tribunal and issued Directions to the Applicant and the Respondent to provide further information.
6. The Respondent's representatives provided copies of the Respondent's bank statements, correspondence from Lanarkshire Council Benefits and Revenue Services, a Council tax statement and an occupancy agreement in advance of the hearing.

The Hearing

7. A hearing was held at Glasgow Tribunals Centre on 21 October 2019. It was attended by the Applicant's representative, Mrs Lesley Barclay and by the Respondent.
8. Mrs Barclay confirmed that the sum claimed had not changed. The arrears had increased by one month before the Respondent had vacated the property but the one month's deposit held in a tenancy deposit scheme had now been returned to the Applicant therefore the amount sought had not changed and remained at £1750.00. The Respondent confirmed this was the case.
9. The Tribunal queried with the Respondent whether the sum of £302.00 stated to be his monthly income on his application for a Time to Pay direction was correct. After some discussion it was accepted by the Respondent that his Housing Benefit element would be paid directly to Lanarkshire council and that it appeared that in the worst case scenario the benefit being paid into his bank account every four weeks would be about £475.00. He therefore had about £170.00 more income per month than was stated on his time to pay application.
10. The Respondent confirmed that he had been paying £25.00 per month to Stirling Park, Sheriff Officers in respect of Council Tax arrears but had fallen behind on these payments due to changing bank accounts. He said he had reinstated the payments with effect from the beginning of November. He confirmed that his broadband and mobile phone costs amounted to £21.00 per month. He said he used cash for most of his other expenditure.
11. The Tribunal queried with Mrs Barclay what steps had been taken by the Applicant to enforce the guarantee given by the Guarantor in the tenancy

agreement. Mrs Barclay explained that there had been a dispute between the guarantor who was the Respondent's sister and the Respondent and she had not wanted to support the Respondent. The Respondent confirmed he had not wanted to involve his sister.

12. Following discussion with regards to the reasonableness of the Respondent's offer to repay the debt at the rate of £5.00 per month the Respondent indicated that as he had incurred costs and inconvenience during the tenancy he hoped there might be some concession on the part of the Applicant to recognise this. For her part Mrs Barclay indicated if there could be an agreement on repayment of the debt the Applicant would agree to reduce the sum claimed by the equivalent of one month's rent reducing the sum sought to £1400.00. In light of that the respondent said he was prepared to increase his offer and was prepared to pay the reduced debt at the rate of £50.00 per month.
13. For the Applicant Mrs Barclay said this offer was acceptable.

Findings in Fact

14. The parties entered into a Short Assured Tenancy agreement that commenced on 8 February 2013.
15. The Respondent accrued rent arrears amounting to £1750.00 as at 8 June 2019.
16. By agreement the parties agreed to settle the Applicant's claim in the sum of £1400.00.
17. The Respondent submitted an Application for a Time to Pay Direction and offered to make payment at the rate of £50.00 per month.

Reasons for Decision

18. The Tribunal was satisfied from the information provided in the application and at the hearing that the parties had entered into a Short Assured Tenancy Agreement and that the Respondent had accrued rent arrears of £1750.00 and that this debt had been acknowledged by the Respondent.
19. As a result of the discussions between the Applicant's representative and the Respondent it was agreed that the sum claimed should be reduced to £1400.00 to reflect certain matters raised by the Respondent and in an effort to reach an amicable conclusion to the proceedings. The Respondent for his part accepted that the original amount offered in his application for a time to pay direction was inadequate and the Tribunal was of the view that the increased amount of £50.00 per month offered at the hearing was equitable in that it would clear the debt in about 28 months and this was acceptable to the

Applicant. The Tribunal was therefore prepared to make a Time to Pay direction in those terms.

Decision

20. The Tribunal makes an order for payment by the Respondent to the Applicant in the sum of £1400.00 payable by monthly instalments of £50.00.

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.

Graham Harding

Legal Member/Chair

21 October 2019

Date