



**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/19/1916**

**Re: Property at 29 Wallacebrae Road, Danestone, Aberdeen, AB22 8YZ (“the  
Property”)**

**Parties:**

**Mr Vincent Tocher, Mrs Susan Jane Tocher, 2 Course Grove, Bridge of Don,  
Aberdeen, AB23 8LR (“the Applicant”)**

**Mr Majid Yazdani-Khonakdari, Mrs Samera Kaveity, 29 Wallacebrae Road,  
Danestone, Aberdeen, AB22 8YZ (“the Respondent”)**

**Tribunal Members:**

**Petra Hennig-McFatridge (Legal Member)**

**Decision in the absence of the Respondents**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that the Applicants are entitled to an order for payment  
of £6,956.16 by the Respondents.**

**Background:**

The application was made on 17 June 2019 by the Applicant’s representatives Peterkins. The application asked for a payment order to be made for the sum of £6,956.16 for unpaid rent up to and including 23 July 2019. Attached to the application were the Short Assured Tenancy Agreement for the property for the lease commencing on 10 December 2015, statement of arrears up to and including 24 May 2019, a copy order for possession of the property under S 33 of the Housing (Scotland) Act 1988 issued by the First – tier Tribunal Housing and Property Chamber (the Tribunal) on 10 June 2019.

A Case Management Discussion (CMD) was scheduled for 15 August 2019 and both parties advised of the date, time and venue.

The service on the Respondents had been carried out by Sheriff Officers 17 July 2019. The Respondents were advised in the notification that the Tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application.

The second named Respondent lodged an application for a time to pay direction dated 27 July 2019 and a Client Authorisation form and Service Agreement for the Aberdeen City Council Financial Inclusion Team dated 24 July 2019 under a covering email from Cathy Lewis, Money Advisor Aberdeen City Council. This also stated that the second named Respondent would be attending a further appointment in about 5 weeks time to discuss payment option but that she had been advised by the Money Advisor to begin payments immediately. The time to pay application offered payment of the debt at the rate of £10 per week.

### **The Case Management Discussion**

The Applicants were represented by Amanda Anderson from Peterkins. She provided an up to date statement for the rent arrears which showed an amendment to the figure charged to the end date of the tenancy as £7,416.43. She advised that the eviction date was officially 6 August 2019 and that the Respondents had not returned the keys prior to that date. No payments had been received by the Applicants. In particular no payments of £10 per week had commenced after 24 July 2019.

She advised that the tenancy deposit is lodged with Safe Deposit Scotland and will be dealt with through Safe Deposit Scotland in due course. There would be demands regarding repairs and other costs the Applicants will be seeking to recover but these have not been fully quantified and have not been intimated to the Respondents at this stage. These do not form part of this application.

With regard to the time to pay application the Applicants are not prepared to agree to this as it would take over 13 years at that rate to pay the sum claimed in the original application.

She also advised that the first named Respondent had been seen by neighbours recently although the time to pay application states that he left the country.

With regard to the difference between the monthly rent stated in the tenancy agreement and the tenant statement of account she explained that the rent had been adjusted to £1000 per month on the request of the Respondents a long time ago, although she could not recall the precise date. The due date for the rent at that time had also been altered to suit the Respondents.

She took instructions from the Applicants over the telephone during a short adjournment and advised that the order sought is for the sum stated in the original application as this had been intimated to the Respondents and accepted as due in the time to pay direction application.

The Respondents did not attend. In the time to pay application the box 9 is ticked indicating acceptance of the debt which forms the Applicant's claim.

## **Findings in Fact:**

- 1. The parties entered into a Short Assured Tenancy for the property with a start date of 10 December 2015 (Clause B) and a monthly rent of £1150 (Clause D) payable in advance (Clause E).**
- 2. The Respondents are joint and severally liable for the payment of rent (Clause 24)**
- 3. At some time prior to December 2018 the monthly rent was decreased to £1000 per month payable on the 24<sup>th</sup> of each month in advance.**
- 4. An order for repossession for was granted to the Respondents on 10 June 2019.**
- 5. The eviction date was 6 August 2019**
- 6. Only £43,84 in rent payments had been received for the period of 24 December 2018 to 23 January 2019. Since then no further payments of rent have been made by the Respondents.**
- 7. As per the rent statement lodged by the Applicant, at the time the application was made the arrears were £6,956.19 to the 23 July 2019.**
- 8. The Respondent Ms Kaveity applied for a time to pay direction on 27 July 2019 proposing repayment of the amount due at the rate of £10 per week.**
- 9. At that rate the repayment of the debt would take in excess of 13 years.**

## **Reasons for Decision**

The Tribunal considered that the facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or
- (c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;
- (b) identifying what facts are agreed between the parties;
- (c) raising with parties any issues it requires to be addressed;
- (d) discussing what witnesses, documents and other evidence will be required;
- (e) discussing whether or not a hearing is required; and
- (f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Power to determine the proceedings without a hearing

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

- (a) may make a decision without a hearing if the First-tier Tribunal considers that—
- (i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and
  - (ii) to do so will not be contrary to the interests of the parties; and
- (b) must make a decision without a hearing where the decision relates to—
- (i) correcting; or
  - (ii) reviewing on a point of law,
- a decision made by the First-tier Tribunal.
- (2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

The documents lodged are referred to for their terms and held to be incorporated herein.

The Respondents do not dispute the amounts stated in the application. Ms Kaveity explicitly admitted liability for the amount stated in the original application and Mr Yazdani-Khonakdari had not made any representations and thus had not disputed any of the facts stated in the application. The time to pay application offered payment at the rate of £10 per week. At that rate the repayment would take over 13 years.

The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case.

The Tribunal also did not consider that the email sent on behalf of the Respondents on 24 July 2019 by Cathy Lewis would necessitate a further Case Management Discussion to be fixed. It does not constitute a request for a postponement of the Case Management Discussion date and gives no reason why the Respondents would not have been able to attend the Case Management Discussion. The Respondents were aware of the possibility that the Tribunal would deal with the matter at the Case Management Discussion.

The Respondents have accrued rent arrears of the amount of £6,956.16 to 23 July 2019. The eviction date was 6 August 2019 and thus the Respondents remained liable for rental payments for the period up to and including 23 July 2019. They had been advised of the amount claimed in the original application. These arrears are not disputed. The Applicants are entitled to payment of that sum by the Respondents.

The First-tier Tribunal for Scotland (Housing and Property Chamber) refuses the request of the Respondent to make a Time-to-pay Direction under Section 1(1) of the Debtors (Scotland) Act 1987. The Tribunal was not satisfied that it was reasonable in all the circumstances to grant a time to pay direction, having regard to the nature and reason of the debt, the action taken by the Applicant to assist the Respondent in paying the debt, the Respondent's financial position, the reasonableness of the Respondent's proposal and the Applicant's agreement to the proposal.

If the application was granted it would take more than 13 years to clear the debt of £6,956.16 at the suggested payment rate of £10 per week. This is not a reasonable timescale.

**Decision**

**The Tribunal grants an order for payment of the sum of £6,956.16.**

**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.**

**P Hennig-McFatridge**

**Legal Member/Chair**

**Date**

15. 8. 19