



**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/19/2602

**Re: Property at Flat 5, 27 Sir Michael Street, Greenock, PA15 1PJ (“the
Property”)**

Parties:

Mr Christopher Doak, 1/1, 250 Bearsden Road, Glasgow (“the Applicant”)

**Mrs Magdalena Kurowska, Flat 5, 27 Sir Michael Street, Greenock, PA15 1PJ
 (“the Respondent”)**

Tribunal Members:

Sarah O'Neill (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for payment by the respondent to the
applicant of the sum of £1500 with interest thereon at the rate of three per cent
(3%) per annum running from the date of this decision until payment should be
granted in favour of the applicant.**

**The tribunal made a time to pay direction under Section 1(1) of the Debtors
(Scotland) Act 1987, requiring the respondent to pay the sum of £200 per
month until the full amount has been paid.**

Background

- 1. An application was received on 19 August 2019 for a payment order brought
in terms of rule 70 (Application for civil proceedings in relation to an assured
tenancy under the Housing (Scotland) Act 1988) of Schedule 1 to the First
Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure)
Regulations 2017 (“the 2017 rules”).**
- 2. The applicant was seeking payment of rent arrears of £1500 from the
respondent in relation to the property, being the amount of arrears**

outstanding as at the date of the application, or the sum payable at the time of the tenant vacated the property, with interest at the rate of 8% per annum.

3. The application included a copy of the tenancy agreement and a rent statement showing the rent outstanding up to and including 22 August 2019 to be £1500.
4. Notice of the case management discussion (CMD) scheduled for 30 October 2019, together with the application papers and guidance notes, was served on the respondent on 25 September 2019 by sheriff officers on behalf of the tribunal.
5. A completed time to pay application dated 15 October 2019 was received from the respondent, admitting the debt and requesting a time to pay direction to pay the money owed at a rate of £200 per month. This was sent to the applicant's representative, who responded on 23 October 2019, rejecting the time to pay application.

The Case Management Discussion

6. A case management discussion was held on 30 October 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The applicant was represented by Mr Campbell Gisbey, Director of Homefinders, who gave evidence on the applicant's behalf. The respondent was present and gave evidence on her own behalf via an interpreter.
7. Mr Gisbey confirmed to the tribunal that no further payments had been made towards the outstanding rent since the application was submitted. He confirmed that the applicant did not accept the respondent's offer of time to pay. He said that she had been in arrears since February 2017, and had made several promises to pay the arrears, but had paid neither the arrears nor her ongoing rent since June 2019. He said that the reasons which she had given in her time to pay application for withholding rent were without merit.
8. He pointed to an updated rent statement dated 23 October 2019 which had been attached to the applicant's response to the time to pay application, and to a further updated rent statement dated 29 October 2019 which he had submitted to the tribunal the previous day. Both of these showed that the arrears had increased to £2625, as no rent had been paid for a further three months, up to and including the month from 23 October to 22 November 2019. He therefore asked the tribunal to grant an order for that amount.
9. The tribunal chairperson pointed out that the request to amend the application to increase the sum claimed had not been intimated to the respondent or the

tribunal fourteen days prior to the CMD as required by rule 14A of the 2017 rules. Mr Gisbey stated that, rather than seek an adjournment to allow such amendment to be made, he wished to proceed on the basis of the sum set out in the application. He said that it was his intention to bring a separate application for the remaining arrears. He told the tribunal that he was preparing an eviction application against the respondent. He said that her son had recently told him that she intended to move out of the property by the end of the current week. The respondent said that she would leave the property by Sunday 3 November. Mr Gisbey said that if she did so, he would not proceed with the eviction application.

10. The tribunal chairperson asked the respondent to confirm whether she admitted that she owed the £1500 arrears set out in the initial application. She said that she admitted this, but that after taking advice, she had, as stated in her time to pay application, been withholding rent due to issues with the property, namely problems with the heating, hot water and shower. When asked by the tribunal chairperson whether she still had the rent money which she had withheld, the respondent said that she did not.
11. Mr Gisbey told the tribunal that the necessary works had been carried out, and that both he and the applicant had been refused access to the property by the tenant to assess the need for repairs.
12. The tribunal chairperson explained to the parties that the issue to be determined by the tribunal was whether the rent arrears claimed were owed. Given that the respondent has admitted this, the only remaining issue to be decided was whether any order granted should be subject to a time to pay direction. While there were other avenues open through the tribunal to complain about repairing standard issues, the tribunal was unable to consider these in relation to the present application.

Findings in Fact

13. The tribunal made the following findings in fact:
 - The tribunal was satisfied that there was a short assured tenancy in place between the parties.
 - The applicant was the landlord in terms of the tenancy agreement between the parties signed on 23 September 2015 and commencing on the same date. The title deed for the property showed that the applicant was the owner of the property.
 - The rent due under the tenancy agreement was £375 per calendar month payable in advance.

- The respondent had been in rent arrears since February 2017, and had made no rental payments since June 2019. As at 23 July 2019, she owed the applicant the sum of £1500 in rental payments.

Reasons for Decision

14. Having considered all the evidence before it, and given that the respondent admitted that the money was due, the tribunal decided to make an order for payment by the respondent to the applicant of the sum of £1500.
15. The tribunal then considered whether to grant the order subject to a time to pay direction, as requested by the applicant. Section 1 of the Debtors (Scotland) Act 1987 states that the tribunal shall, if satisfied that it is reasonable in all the circumstances to do so, and having regard to the matters mentioned in subsection 1A, direct that the sum claimed shall be paid by instalments or as a lump sum.
16. The matters mentioned in subsection 1A are:
 - a) The nature of and reasons for the debt in relation to which the order 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.
17. The tribunal considered whether it was reasonable in all the circumstances to grant a time to pay direction. It noted that the applicant did not accept the respondent's proposal, because previous offers to pay had not resulted in payment. While the tribunal had some sympathy with the applicant, it was clear that the respondent did not have the money required to pay the arrears upfront.
18. The tribunal noted that it would take the respondent around 8 months to repay the outstanding debt at the proposed rate of £200 per month. In her time to pay application, the respondent stated that she was in employment; that she was supporting her two adult children, one of whom was in full time education; that she had credit card debts and an overdraft. The figures provided showed that after her monthly outgoings, she had around £270 of her income left each month. The £200 per month offered represented around one eighth of her net income. Given her financial situation, the tribunal considered that the proposal to repay the debt was reasonable.
19. Having considered all of the evidence before it, the tribunal was satisfied that it was reasonable in all the circumstances to grant a time to pay direction as

sought by the respondent. The tribunal chairperson explained to the respondent that if she failed to keep up the agreed payments, however, the applicant would then be able to take action against her to enforce the order for the full amount outstanding.

20. The tribunal also considered the applicant's request for interest of 8% per annum to be added to the sum payable from the date of application until payment. Mr Gisbey confirmed that he wished to seek interest at this rate on the sum granted. When asked where the 8% figure had come from, he indicated that he understood that this was the standard rate of interest granted in the sheriff court in simple procedure cases.
21. The tribunal noted that there was no statutory basis for the tribunal to grant interest at the judicial interest rate of 8% which applies in the sheriff court. In terms of rule 41A of the 2017 rules, the tribunal may include interest when making an order for payment. Any such interest is to be at the rate either a) stated in the relevant tenancy agreement or b) ordered by the tribunal, and runs from the date of the tribunal's decision.
22. As the tenancy agreement made no provision for interest to be paid, it was therefore for the tribunal to decide whether to include interest, and if so, at which rate. The tribunal decided to grant interest as requested, and considered that an appropriate interest rate would be 3% per annum, given the Bank of England base rate and current rates for borrowing for short term loans.

Decision

The tribunal grants an order for payment by the respondent to the applicant of the sum of £1500 with interest thereon at the rate of three per cent (3%) per annum running from the date of this decision until payment.

The tribunal made a time to pay direction under Section 1(1) of the Debtors (Scotland) Act 1987, requiring the respondent to pay the sum of £200 per month until the full amount has been paid.

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.

Sarah O'Neill

Legal Member/Chair

30 October 2019

Date