

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 71 Private Housing
(Tenancies) (Scotland) Act 2016**

Re: Property at 19 Malcom Road, Banff, AB45 1BU (“the Property”)

Parties:

**Mr Robert Michael Ibbotson, C/O Jeanette Hoather, East Rothen Croft, Cornhill,
Banff (“the Applicant”)**

**Mr Kenneth McLeod, Mrs Fiona McLeod, 19 Malcolm Road, Banff, AB45 3BP
 (“the Respondents”)**

Tribunal Member:

Josephine Bonnar (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £2684 should be granted against the Respondents in favour of the Applicant.

Background

1. By application dated 22 September 2021, the Applicant seeks a payment order in relation to arrears of rent of £2000. A copy tenancy agreement and rent statement were lodged in support of the application.
2. A copy of the application was served on the Respondent by Sheriff Officer on 23 November 2021. Both parties were advised that a case management discussion (“CMD”) would take place by telephone conference call on 22 December 2021 at 2pm. On 7 December 2021, the Applicant lodged a request to amend the application as the arrears of rent had increased to £2800.
3. The CMD took place on 22 December 2021 at 2pm. The Applicant was represented by Mr Duffill, solicitor. The second Respondent also participated.

Case Management Discussion

4. Mrs McLeod advised the Legal Member that she had received a copy of the request to amend the application to £2800. The Legal Member noted that the request includes the rent payment due on 1 December 2021 for the period to 31 December 2021. It therefore includes rent due for a period of time which has not passed. Mr Duffill confirmed that he accepted this to be the case and confirmed that he was seeking a payment order for the reduced sum of £2684, being the rent arrears outstanding up to the date of the CMD. The Legal Member granted the request to amend the application to reflect this figure.
5. Mrs McLeod advised the Legal Member that the sum of £2684 is unpaid and is due. She said that the Respondents had experienced financial problems because of COVID 19. However, she has recently started a full-time job and can now offer to repay the arrears. She said that she could offer the sum of £25 per week in addition to the ongoing rent charge. In response to questions from the Legal Member, Mrs McLeod said that she and her husband do not have any dependants living with them, as her son has recently moved out. Mr McLeod earns between £220 and £250 per week. She has only recently started her new job and is not sure what her take home pay will be but thinks it will be about £900 per month. The Respondent's regular monthly outgoings are £140 for gas and electricity, £54 for Council Tax, £80 for car tax and insurance and £400 for rent. Mrs McLeod said that she had not completed an application for a time to pay direction as she had not received the form with the application paperwork.
6. Mr Duffill said that the request for time to pay at the rate of £25 per week was opposed. He stated that 100 weeks was an excessive period for the debt to be repaid and that the offer of £25 per week was not reasonable given the information provided about disposable income. He also advised the Legal Member that the tenancy has only been running for two and a half years, the Respondents have been in arrears since August 2020 and currently owe an amount equivalent to 7 months rent.

Findings in Fact

7. The Applicant is the owner and landlord of the property.
8. The Respondents are the tenants of the property in terms of a private residential tenancy agreement.
9. In terms of the tenancy agreement, the Respondents are due to pay rent at the rate of £400 per month.
10. The Respondents owe the sum of £2684 in unpaid rent to the Applicant.

Reasons for Decision

11. The application was submitted with a private residential tenancy agreement and a rent statement. In terms of the tenancy agreement, rent is due to be paid at the rate of £400 per month. The rent account went into arrears in August 2020. The sum currently outstanding is £2684. The Legal Member is satisfied that the Applicant is entitled to a payment order for this sum.
12. The Respondents did not submit a written application for time to pay. However, the Second Respondent indicated that they wished to offer to pay the debt at the rate of £25 per month. This was opposed by the Applicant. The Legal Member noted that there is some uncertainty as to the Respondents joint income as the Second Respondent has only recently started a new job. It is estimated to be about £1900. It was also noted that their total monthly outgoings, including their rent charge, are estimated to be £674, although no allowance appears to have been made for telephone/mobile or petrol. The second Respondent also advised that there is no credit card debt or loans. If the figures provided are accurate, the Legal Member is not persuaded that an offer of £25 per week is reasonable, given the apparent level of disposable income. Furthermore, the length of time it will take seems excessive in the circumstances. The uncertainty as to actual take home pay also makes it very difficult to assess whether the offer is affordable. In the circumstances, the Legal Member is not satisfied that a time to pay direction should be granted for instalments of £25 per week.

Decision

13. The Legal Member determines that an order for payment for the sum of £2684 should be granted in favour of the Applicant and that a time to pay direction should not be granted.

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.

Josephine Bonnar

