



**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/20/1856**

**Re: Property at Lochton Cottage, Banchory, Aberdeenshire, AB31 4ES (“the  
Property”)**

**Parties:**

**Leys Estate, Leys Estate, Banchory Business Centre, Burn O'Bennie Road,  
Banchory, AB31 5ZU (“the Applicant”)**

**Tracy Donoghue, Mr Wilson Donoghue, Fairview, Crathes, AB31 4HD (“the  
Respondent”)**

**Tribunal Members:**

**Melanie Barbour (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that**

**Background**

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 70 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for payment in relation to sums due under a guarantee agreement together with interest on that sum at the rate of 8% per year from the date of service of the application until payment and the expenses of the application.
2. The application contained :-
  - A copy of the tenancy agreement,

- A copy of the guarantor agreement,
  - Rent statement, and
  - Letter to the guarantors seeking payment.
3. A case management discussion took place on 9 November 2020, the Applicant's representative, Mr Jones from Messrs Russell & Aitken LLP appeared. There was no attendance from the Respondents. Service of the application had been made by sheriff officers on the Respondents on 7 October 2020. As I was satisfied that service had been affected and the Respondents were aware of the case management discussion, I continued with it in their absence. After hearing from the Applicant's agent, on the basis of the evidence submitted and having regard to all papers submitted I made an order for the sum sought. Reference is made to my written decision with statement of reasons.
  4. On around 13 November 2020 the Respondents contacted the Tribunal's administration office advising that they had submitted a time to pay application. This application had not been received by the Tribunal. The Applicants advised that they did not object to me reviewing my decision but opposed the time to pay application. On 26 November 2020 I reviewed my decision, recalled the order for payment and continued the matter to a further case management discussion.
  5. At today's case management discussion, the Applicant's representative, Mr Jones from Messrs Russell & Aitken LLP appeared. Mrs Tracey Donoghue appeared for both Respondents. Also, in attendance as Mrs Tracey Donoghue's supporter, was her daughter, Shirley Donoghue. I noted that in terms of the time to pay application lodged the Respondents accepted liability for the sum sought. Mrs Donoghue confirmed that she was not disputing that this sum was due.
  6. For the avoidance of doubt while I recalled the order for payment granted at the previous case management discussion, my decision together with the findings in fact and my reasons still stand, the only issue before me today is the question as to whether or not I should grant a time to pay order.

### Discussion

7. Mrs Donoghue advised that in support of her application for a time to pay, she asked that the tribunal consider that the Covid-19 Pandemic had had a detrimental effect on her and her husband's ability to earn a living. Her husband ran a property maintenance company, and he was not classed as an essential worker, and since the latest lockdown he had not been able to work. In addition, since the COVID-19 pandemic had begun, he had not been able to obtain as much work as a lot of people did not wish to have work carried out to their property during the pandemic. This had impacted on his ability to earn a living. She advised that her husband also suffered from ill-health and this too had also

affected his ability to work on a full-time basis and therefore earn a living. She advised that if their circumstances altered and improved and if the time to pay order was granted, then the Respondents would look to increasing any payments towards the debt, if they were able to do so. She finally submitted that if the offer of £50 per month was not acceptable then the Respondents would be able to offer £100 per month as repayment.

8. Mr Jones, the Applicants' agent, advised that the Applicants' decision to reject the time to pay application had been made at a time when the country was not in the latest lockdown. He advised that he was grateful to Mrs Tracey Donoghue for setting out the additional detail regarding their circumstances. He advised that the order for payment was £4,510.57 having regard to the proposed £50 per month it would take 7.5 years to repay this sum. He advised that the Respondent had been advertising his property management services during the Covid-19 pandemic. He submitted that the revised offer of £100 per month would still take 3.25 years to repay. He acknowledged however that the current lockdown restrictions would have an impact on the Respondents' ability to carry out property maintenance services and therefore earn a living. He advised that the Applicants' preference was that the time to pay order be refused and the parties come to a repayment arrangement themselves, failing which that a time to pay order for £200 per month be granted.

#### Reasons for Decision

9. The Respondents do not dispute that the sums sought by the Applicants. As noted earlier I only intend to consider whether or not a time to pay order should be granted.
10. The original offer was for £50 per month. This would take 7.5 years to repay. In all the circumstances I did not consider that this was a reasonable period for the Applicants to have to wait to be repaid the sum due. Mrs Tracey Donoghue advised that her husband's situation had been affected by the Covid-19 pandemic impacting on his ability to earn a living. She also provided details of Mr Donoghue's health which again would appear to impact on his ability to earn a living. While I appreciate that the Covid-19 pandemic has impacted on many people's ability to earn a living, over the course of the next 7 and half years, hopefully the financial impact of the Covid-19 pandemic will diminish and the situation of the Respondents will improve.
11. There was however no information at all about any wages being earned by the Respondents and therefore no wages have been taken into account in assessing whether the time to pay offer is acceptable. On the basis of the information provided, which financial income appeared to me to be made up of benefits and therefore more fixed and certain, I considered that repayment at a higher rate would not be unreasonable.
12. The Applicant's agent, I found to be sympathetic to the situation facing the Respondents and was reasonable in the approach that he adopted in

considering the additional information provided. He noted that the decision to reject the time to pay offer had been made a time before the current lockdown. It also appeared that if the time to pay was refused the Applicants would be agreeable to an informal repayment arrangement. He suggested that the Tribunal make no order or an order of £200 per month.

13. Mrs Donoghue in her submission advised that the Respondents could offer a revised sum of £100 per month. This would mean that the debt will be repaid in just over three years. While I consider that this is still a fairly significant period of time to repay the debt, having regard to the financial information provided; the impact of the covid-19 pandemic; and as Mr Donoghue has ongoing ill-health issues which he requires to deal with, I consider that this revised offer is reasonable. It also appeared to me to be an offer which could be adhered to by the Respondents' having regard to the financial information provided by them.

14. Accordingly, I grant a time to pay offer at a rate of £100 per month.

#### Decision

15. I grant an order in favour of the Applicants for FOUR THOUSAND FIVE HUNDRED AND TEN POUNDS FORTY-SEVEN PENCE (£4,510.47) STERLING against the Respondents jointly and severally; with a time to pay order being granted at a rate of £100 per month.

#### **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.**



Melanie Barbour  
Legal Member/Chair

13/01/2021  
Date