



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

**Chamber Ref: FTS/HPC/CV/20/1916**

**Re: Property at 61 Bruce Gardens, Dalkeith, EH22 2LB (“the Property”)**

**Parties:**

**Miss Lynne Fraser, Mr Simon Bates, 27 Thornyhall, Dalkeith, EH22 2ND (“the Applicants”)**

**Mr William Lindsay, Ms Francesca Karch, 61 Bruce Gardens, Dalkeith, EH22 2LB (“the Respondents”)**

**Tribunal Members:**

**Rory Cowan (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a Payment Order in the sum of £5,176.78.**

- Background

By application dated 10 September 2020 (the Application), the Applicants sought an Payment Order in the sum of £5,176.78 relative to rent arrears for the Respondents tenancy at the Property.

In support of the Application, various documents were lodged, including:

- 1) Copy Lease
- 2) Bank statements; and
- 3) A rent statement detailing the arrears.

In response to the Application, the Respondents admitted the sums due and lodged an application for Time To Pay under the Debtors (Scotland) Act 1987. Following that, the Applicants objected to the amount offered under the Respondents Time To Pay Application.

- The Case Management Discussion

A Case Management Discussion (CMD) was assigned for 25 November 2020 to be dealt with by way of conference call. Both Applicants and both Respondents attended and took part in the call. It was agreed between the Applicants that Mr Bates would primarily represent them and for the Respondents that Mr Lindsay would do likewise although it was agreed that if the other parties wished to, they would be given the opportunity to make any representations.

Mr Bates on behalf of the Applicants confirmed that the arrears as at the date of the CMD were £6,076.78. Notwithstanding, the Applicants declined to seek a continuation to seek to amend the Application to increase the sums sought. Accordingly, the Application was restricted to the arrears up to and including 10 September 2020.

Mr Lindsay on behalf of the Respondents confirmed that they understood that a Payment Order in the sum of £5,176.78 would be granted and reiterated the offer made under their application for Time to Pay, being £20 per month. He indicated that this was all they could afford and could guarantee that they could pay on a regular basis as their income was irregular. The full circumstances were as detailed in the application for Time to Pay.

Mr Bates confirmed that the Applicants maintained their objection to the offer. They took the view that the Respondents income was not accurately stated and they took the view they could pay more. It was indicated that the Applicants would accept payments at the rate of £200 per month. Notwithstanding Mr Lindsay indicated that they could not increase their offer beyond the £20 per month.

The Tribunal noted that, at the rate of £20 per month, it would take in excess of 21 years to repay the principal sum. As such, it would not be reasonable to order that the debt be repaid at this rate. As such the application for time to pay was refused. It is of course open the parties to agree a payment plan between them and the Tribunal would encourage them to do so.

- Findings in Fact

- 1) The Respondents entered into a tenancy for the Property.
- 2) That the rent payable under that tenancy agreement was £650 per calendar month.
- 3) That, as at 10 September 2020, the Respondents were in arrears of rent totalling £5,176.78.

- Reasons for Decision

The Respondents accepted that they had failed to pay the rent due under the tenancy for the Property have accrued arrears of rent in the sum of £5,176.78 as at 10 October 2020.

- Decision

A Payment Order in the sum of £5,176.78 should be issued in favour of the Applicants against the Respondents.

### **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.**

  
**Rory Cowan**  
**Legal Member/Chair**

**25 November 2020**  
**Date**