



**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/20/2239

Re: Property at Lagg Farmhouse, Lagg, Isle of Jura, PA60 7XQ (“the Property”)

Parties:

**Tarbert Estate Partnership, c/o Edwin Thompson LLP, 76 Overhaugh Street,
Galashiels, TD1 1DP (“the Applicant”)**

**Mr Melvyn Summers, Mrs Delia Summers, 17 Jedburgh Drive, Renfrew, PA2
9JH (“the Respondent”)**

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 £7,205 should be issued in favour of the Applicants with interest thereon at the rate of 3% per annum. That the Respondents’ Application for Time To Pay should be refused.

- Background

By way of application dated 22 October 2020 (the Application) the Applicants seek a Payment Order against the Respondents in relation to rent arrears relative to the Property amounting to £7,205 as well as contractual interest. A Case Management Discussion (CMD) was fixed for 15 December 2020 to be dealt with by way of conference call. At that CMD, the Applicants were represented by a Mr Gardiner. In advance of the CMD, the Respondents had lodged 2 applications for Time To pay admitting the claim and seeking to pay the sums claimed by way of instalments. The Respondents also indicated that, due to work commitments, they would be unable to participate with that CMD.

Following the CMD on 15 December 2020, and as a result of matters raised in the Respondents’ Time to Pay Applications, the Tribunal resolved to continue the CMD

and the applications for Time To Pay to allow the Respondents time to consider their position and, if they chose to do so, seek legal advice on what, if any, defence to the Application may be open to them and for them to confirm whether they admitted the claim and would therefore seek Time To pay in relation to same. In addition, if the Respondents were to seek Time To Pay, whether the sum of £125 per month mentioned in each Time To Pay was a joint figure.

A continued CMD was set for 11 January 2021, the Respondents again did not appear, but in the morning of 11 January 2021, Tribunal administration received an email from the Respondents indicating that:

- 1) The offer of £125 per months was a combined offer;
- 2) That they could not participate in the CMD set for 11 January 2021 due to work commitments; and
- 3) That they “acknowledge that the rent needs paying”.

The Tribunal took the view that, by their email dated 11 January 2021, the Respondents were confirming that they admitted the claim and were seeking Time To Pay.

Mr Gardiner again appeared on behalf of the Applicants. He confirmed that, whilst an oral objection had been made to the Respondents’ Time To Pay Application at the last CMD, no written objection had been lodged. Following an application under Rule 16A the Applicants were allowed further time to lodge their objection. As a result, a further CMD was fixed for 3 February 2021 to consider the Respondents’ application for Time To Pay and any objections to same. Prior to the CMD on 3 February 2021, the Applicants lodged their objection to the Time To Pay, which was copied to the Respondents.

- The Case Management Discussion

At the CMD on 3 February 2021, the Applicants were again represented by Mr Gardiner. Mrs Summers appeared for herself and on behalf of Mr Summers (the Respondents). She confirmed on behalf of both Respondents that she had received the previous CMD notes that had been issued and understood them. She also confirmed receipt of the objection to their application for Time To Pay. She confirmed that the debt was admitted and that the Respondents wished to seek Time To Pay.

As such, the only live issue was the question of the application for Time To Pay. Mrs Summers confirmed that the position per the Respondents’ application for Time To Pay was still correct. She confirmed that the most the Respondents could commit to at this stage was the £125 per month as there was a risk that, should they pay more, other debts might be incurred. Their financial position was such that they could not guarantee to be able to pay more but she hoped they would be able to pay more in order to allow them to clear this debt. In response Mr Gardiner confirmed that the application was opposed. The tenancy ended in March 2019. At the rate proposed by the Respondents, it would take 4 years 10 months to repay the principal sum. That attempts were made in 2019 to make arrangements with the Respondents to make payments to the arrears, but these had been unsuccessful. That on or around February 2020, his firm had been engaged and arrangements had been made for

the Respondents to start making payments at the rate of £150 per month. Despite this only one payment of £150 was made in March 2020. After discussion with both parties it was confirmed that, even after that arrangement had broken down, the Respondents had indicated they would still make payments at the rate of £20 per month to at least pay something (their circumstances were such that they could not pay more). Despite this, only one payment of £20 was made in June 2020. No payments have been made since then. Mrs Summers outlined the financial position of the Respondents over the period and that her husband had been unable to work and she had been furloughed as a result of the COVID-19 pandemic for some time. She indicated that she is currently working albeit her hours are not fixed. She also confirmed that the sum of £927.91 listed as "Credit and Loans" was for car payments and to repay credit cards.

- Findings in Fact and Law

- 1) That the Applicants and Respondents entered into a lease for the Property that ended on or around March 2019.
- 2) That the rent due by the Respondents under the lease for the Property was £325 per month.
- 3) That when the Respondents vacated the Property there were substantial arrears of rent.
- 4) That 2 payments totalling £170 have been made by the Respondents since they vacated the Property.
- 5) That the total arrears of rent now stand at £7,205.
- 6) That in terms of clause 6.2 of the lease between the Applicants and the Respondents, the Applicants are entitled to contractual interest on any arrears at the rate of 3 per centum per annum.
- 7) That the Respondents application for Time To Pay at the rate of £125 per months was not reasonable in all the circumstances of the case.
- 8) That the Applicants were therefore entitled to a payment order in the sum of £7,205 with interest at the rate of 3 per centum per annum from the date of the decision.

- Reasons for Decision

The Respondents admit that the arrears of rent sought by the Applicants are due. In terms of clause 6.2 of the lease between the parties the Applicants are entitled to charge interest at the rate of 3% per annum to any late payments. It was therefore appropriate to apply that contractual rate of interest to any award made in favour of the Applicants and fair notice of the claim for interest had been given to the Respondents.

The Tribunal took the view that it was not reasonable in all the circumstances of the case to grant the application for Time To Pay. It would take nearly 5 years to pay off the principal sum even excluding any interest applied. It appeared that various attempts had been made by the Applicants to contact the Respondents and to agree repayments with them and on each occasion that something had been agreed the Respondents almost immediately defaulted. The debt is a significant sum and is based on rental payments of £325 per month which accrued over a prolonged period

some time ago and no realistic attempts have been made by the Respondents to make payments to the debt. It appeared to the Tribunal that the Respondents wished to prioritise other debts and payments over the arrears due to the Applicants. Overall and notwithstanding the difficult position the Respondents found themselves in, the Tribunal was of the view that it was not reasonable in the circumstances to grant the application for Time To Pay. All that said, the Tribunal stressed to the parties that it was in their interests to communicate with each other and try and agree some form of repayment schedule which could be reviewed should the Respondents' financial position change and the Tribunal would encourage them to do so.

- Decision

A Payment Order in the sum of £7,205 with interest thereon at the rate of 3% per annum from the date of this decision was granted. The Respondents' application for Time To pay was refused.

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

3 February 2021

Legal Member/Chair

Date