

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 71(1) of the Private Housing  
(Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/EV/21/2878**

**Re: Property at 14 Kingsmills Court, Elgin, IV30 4EW (“the Property”)**

**Parties:**

**Mrs Christine McWilliam, 24 Viewfield Terrace, Dunfermline, KY12 7HZ (“the applicant”)**

**Miss Kerianne Macdonald, 6 Cuthill Road, Keith, AB55 5AS (“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 of the sum of £3844.66 should be granted in favour of the applicant. The order was granted subject to a time to pay direction.**

**Background**

1. An application was received on 22 November 2021 from the applicant’s representative for a payment order brought in terms of rule 111 (Application for civil proceedings in relation to a private residential tenancy) 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 £3844.66 from the respondent in relation to the property, being the amount of arrears due as at 11 July 2021, the date on which the respondent vacated the property. Attached to the application form were:
  - i. Copy private residential tenancy agreement between the parties dated 1 October 2019
  - ii. Copy notice to leave sent to the respondent dated 3 December 2020

- iii. Numerous pre-action requirements letters dated between 7 July 2020 and 9 June 2021, which had been sent to the respondent by the applicant's representative, Cluny Estate Agents, advising her of her current rent arrears.
  - iv. Rent statement showing the outstanding rent arrears to be £3844.66 as at 13 July 2021.
  - v. Letter to the applicant's representative from Walker Love Professional Investigations confirming that the respondent had been traced to a new address, 6 Cuthill Road, Keith, where she was living with her mother.
  - vi. Email dated 18 November 2021 from the applicant to Cluny Estate Agents authorising them to pursue the rent arrears on her behalf.
  - vii. Section 11 notice sent to Moray Council by the applicant's representative on 9 June 2021, with proof of receipt.
3. The application was accepted for determination on 2 December 2021. Notice of the case management discussion (CMD) which had been arranged for 27 January 2022, together with the application papers, was served on the respondent by sheriff officer on behalf of the tribunal on 22 December 2021.
4. The tribunal issued a direction to the applicant seeking further information on 5 January 2022, and a response was received the following day. An application for a time to pay direction was received from the respondent on 11 January 2022. This was sent to the applicant's representative, who submitted a response on 13 January 2022, indicating that the applicant was not content with the proposal for payment made by the respondent. The tribunal therefore decided to proceed with the CMD as scheduled.

### **The CMD**

5. A case management discussion (CMD) was held by remote teleconference call on 27 January 2022. Mr Charles Beck, Rental Manager, Cluny Estate Agents, represented the applicant on the teleconference call. The respondent was present on the call and represented herself.
6. Mr Beck confirmed that no further payments had been made by the respondent, and that the outstanding sum owed to the applicant was still £3844.66. The respondent confirmed that she admitted that this sum was due and said that she understood she had been in the wrong. Her personal and financial circumstances had been difficult for some time, and she had moved back in with her parents in order to be in a position to pay the money back. She had offered to pay £100 per month in her time to pay application but said that she could manage £150 per month. She works as a carer, and her hours vary from one week to the next. She is contracted to work 27 hours pre week, but sometimes works more hours than this. She said that if the time to pay direction was granted, she would set up a direct debit to make the monthly payments.

7. The tribunal chairperson went through the details of the respondent's financial position and her personal circumstances, as set out in her time to pay application form. This showed that, based on her guaranteed net monthly income of £850 per month for 27 hours work, she had around £100 left per month after paying her rent, travel, food, phone and other costs. Among other things, she was paying £200 in rent every month to her mother, and she was paying work-related travel costs of £200 per month, as she worked in Elgin and was now travelling from Keith. She confirmed that on the months when she worked more hours, she would have more than £100 left. If possible, she may be able to pay more than £150 some months, depending on the hours she worked.
8. Mr Beck told the tribunal that he had no major issues with the breakdown given by the respondent regarding her financial position. He said that the applicant's main concern with the offer of £100 per month made by the respondent was that it would take more than three years to pay off the sum owed at that rate. The matter had already been ongoing for some considerable time, given the time taken to trace the respondent at her new address.
9. He thought however, that the applicant would be content with the increased monthly payment of £150 being offered by the respondent. He noted that at this rate of payment, it would take just over two years to pay off the sum owed.
10. The tribunal chairperson asked the respondent whether she was sure that she could afford to pay £150 per month. The respondent confirmed that she believed that she could pay this amount. The tribunal adjourned the CMD briefly to allow Mr Beck to take instructions from the applicant in relation to the respondent's increased offer. Following this, he confirmed that the applicant was willing to accept this offer, and was content for the tribunal to issue an order subject to a time to pay direction at the rate of £150 per month.

## **Findings in fact**

11. The tribunal made the following findings in fact:
  - There was a private residential tenancy in place between the parties, which commenced on 1 October 2019.
  - The applicant is the owner of the property (which was registered under her former name, Christine Nicolson) and the registered landlord of the property.
  - The respondent vacated the property on or around 11 July 2021.
  - The rent due under the tenancy agreement was £400 per calendar month, payable in advance on the 1st of each month.

- The respondent had paid a tenancy deposit of £600 at the start of the tenancy. The deposit had been awarded in full to the applicant by Safe Deposits Scotland following termination of the tenancy. It had been awarded in respect of cleaning, clearing and damages, and none had been paid towards rent arrears.
- As at the date of the CMD, the respondent owed the applicant the sum of £3844.66 in rental payments. This was admitted by the respondent.

## **Reasons for Decision**

12. In considering whether to grant a time to pay direction as requested by the respondent, the tribunal considered whether it was reasonable in all the circumstances to do so, in terms of section 1 of the Debtors (Scotland) Act 1987 ('the 1987 Act'). In doing so, the tribunal had regard in particular to the following matters, as set out in section 1A of the 1987 Act:

- (a) The nature of and reasons for the debt in relation to which the order was 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;
- (e) The reasonableness of any refusal of, or any objection by the creditor to, any proposal by the debtor to pay the debt.

13. The tribunal considered the respondent's financial and personal circumstances, the increased offer she had made to pay £150 per month towards the debt, and her assurance that she could afford to maintain repayments at that level. The tribunal also noted that the applicant was willing to accept this proposal, and that it would take the respondent just over 2 years to pay off the debt at this rate.

14. Having taken all of these issues into account, the tribunal determined that in all the circumstances, it was reasonable to grant a time to pay direction in the terms proposed by the respondent and accepted by the applicant. The tribunal explained to the parties that if the respondent missed a payment, the time to pay direction would lapse and the order would become enforceable for the full amount owed.

## **Decision**

The tribunal grants an order for payment by the respondent to the applicant for the sum of £3844.66. The order was granted subject to a time to pay direction under which the respondent is required to pay the sum of £150 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

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**Legal Member/Chair**

**27 January 2022**  
**Date**