



**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/22/0402**

**Re: Property at Flat 9, Old Courthouse Buildings, Commerce Street, Arbroath, DD11 1NA (“the Property”)**

**Parties:**

**Sunniside Homes Ltd, India Buildings, 86 Bell Street, Dundee, DD1 1HN (“the Applicant”)**

**Mr Philip Keilloh, Ms Claire Mathieson, 27A Noran Avenue, Arbroath, DD11 1TF (“the Respondent”)**

**Tribunal Members:**

**Richard Mill (Legal Member)**

**Decision (in absence of the Respondents)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order be granted against the Respondents for payment to the Applicant of the sum of One Thousand Three Hundred and Three Pounds and Thirty Four Pence (£1,303.34)**

**Introduction**

This is an application under rule 111 and section 71 of the Private Housing (Tenancies) (Scotland) Act 2016.

Intimation of the application and of the Case Management Discussion (CMD) took place upon the respondents by Sheriff Officers on 18 August 2022.

In terms of correspondence received from the respondent’s agent it is accepted that rent arrears remain outstanding though it is submitted that the deposit paid should be

applied to reduce the arrears. An application for a time to pay direction was submitted on their behalf.

The CMD took place by teleconference at 10.00 am on 29 September 2022. The applicant was represented by Ms Gillian Inglis of Belvoir. Neither the respondents or their solicitor participated in the hearing.

### Findings and Reasons

The property is Flat 9 Old Courthouse Buildings, Commerce Street, Arbroath DD11 1NA.

The applicant is Sunnyside Homes Ltd. This company is the heritable proprietor of the property and the registered landlord. The respondents are Mr Philip Keilloh and Ms Claire Mathieson who are the former tenants.

The parties entered into a private residential tenancy which commenced on 19 October 2019. The rent was stipulated at a rate of £355 per month. A deposit had been paid in the sum of £495.

Throughout the duration of the tenancy the respondents fell into arrears of the contractual rental payments. The tenancy ended on 24 February 2022.

The application is supported by a rent account statement disclosing the sums of rent and other charges which fell due and the monies received. The tribunal found this documentary evidence credible and reliable and attached weight to it. The amount sought in this application is £1798.34, reflected within the rent account statement.

The applicant's agent stated that the deposit had been applied to dilapidations occasioned by the respondent's actions but in order to expedite resolution of this application agreed that the sum sought be reduced by the amount of the deposit paid. This leaves a balance of £1,303.34.

The applicant is entitled to recover arrears of rent under and in terms of the lease. The respondents have not opposed the application and accept the reduced sum sought is due, in accordance with the written representations received from their solicitor.

The respondents have made an application for a time to pay direction in which they seek to repay the sum due at the rate of £20 per month. At this rate the sum would take more than 5 years to pay off.

The applicant objects to the time to pay application on the grounds that it would take too long for the respondents to clear the debt.

In terms of the Debtors (Scotland) Act 1987 (amended by the First-tier Tribunal for Scotland Housing Property Chamber (Incidental Provisions) Regulations 2019), the Tribunal will make a time to pay direction if satisfied that it is reasonable in the circumstances to do so, having regard in particular to the nature and reasons for the

debt in relation to which the order is sought, any action taken by the creditor to assist the debtors in paying the debt, the debtors' financial position, the reasonableness of any proposal by the debtor to pay that debt, and the reasonableness of the objection by the creditor to the offer.

The Tribunal finds that it would be unreasonable to expect the applicant to wait more than 5 years for the respondents to pay the sum due by her in such an instalment arrangement. The respondents' offer made under the time to pay application is not reasonable. The Tribunal refused the application for a time to pay direction and proceeded to make an order for payment in the full sum 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.**

Richard Mill

**29 September 2022**

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**Legal Member/Chair**

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**Date**