



**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 and Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.**

**Chamber Ref: FTS/HPC/CV/22/1352**

**Re: Property at 19 Oldtown Place, Aberdeen, AB16 7LR (“the Property”)**

**Parties:**

**Miss Sylwia Przenioslo and Mr Eryk Wlodarczyk, 48 Abbotswell Crescent, Aberdeen, AB12 5AR (“the Applicants”)**

**Mrs Paulina Samp and Mr Krzysztof Samp, 23A Bedford Avenue, Aberdeen, AB24 3YP; 23A Bedford Avenue, Aberdeen, AB24 3YP (“the Respondents”)**

**Tribunal Members:**

**Martin McAllister (Legal Member) and Elizabeth Williams (Ordinary Member) (“the tribunal”)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondents pay the sum of FIVE THOUSAND NINE HUNDRED AND SIXTY THREE POUNDS SIXTY SEVEN PENCE (£5,963.67) to the Applicants**

**Background**

1. This is an application for payment. The application is dated 9<sup>th</sup> May 2022.

Attached to the application was:

- (i) Copy of the short assured tenancy agreement for the Property dated 21<sup>st</sup> August 2016.
- (ii) Copy rent statement from October 2020 to December 2021 showing a total sum due of £5,963.67.

- (iii) Copy bank statement of the Applicants.
- 2. A case management discussion was held on 5<sup>th</sup> August 2022 at which the Respondents had indicated that the sum sought by the Applicants was not in dispute.
- 3. Subsequent to the case management discussion, both parties submitted written representations.

### **The Hearing**

- 4. A Hearing was held on 3<sup>rd</sup> October. The Respondents were present. Miss Przenioslo was present. The tribunal was assisted by Ms Kubikowska, a Polish interpreter.

### **Preliminary Matters**

- 5. It was noted that the written representations submitted by the Respondents contained information about medical issues and children and, because of this, the Tribunal had not sent a copy to the Applicants. Mr and Mrs Samp agreed that this document could be sent to the Applicants and proceedings were adjourned for thirty minutes to allow this to be done and to allow Miss Przenioslo an opportunity to read it.

### **The Applicant's Position**

- 6. Ms Przenioslo confirmed that, having read the written representations of the Respondents, she was still seeking an order for payment.

### **The Respondent's Position**

- 7. It was noted that, in the representations submitted by the Respondents, it is accepted that the sum will require to be paid: "*we will need to pay overdue rent anyway.*" The representations go on to state that the Respondents offer to pay the sum at the rate of £20 per week.
- 8. In response to questioning, Mr and Mrs Samp confirmed that they accept that they are due to pay the sum of £5,963.67 to the Applicants. They said that they could not afford to pay more than £20 per week. When it was pointed out that such a payment schedule would mean that it would take more than twenty four years for the debt to be paid, Mrs Samp said that this was all that they could afford, that they were both in education and that they hoped to be able to pay more in the future.
- 9. Mrs Samp confirmed that the Respondents had not submitted an application for a Time To Pay Direction in terms of the Debtors (Scotland) Act 1987.

## Findings in Fact

- 10.1 The Applicants and the Respondents entered into a short assured tenancy agreement for the Property on 21<sup>st</sup> August 2016.
- 10.2 The tenancy commenced on 1<sup>st</sup> September 2016 and terminated on 17<sup>th</sup> December 2021.
- 10.3 The initial rent due was £850 per month but this was subsequently reduced to £750 per month.
- 10.4 At the end of the tenancy, there were rent arrears of £5,963.67. This sum remains outstanding.

## Reasons

11. The written representations of the Applicants include a statement of the rent since the commencement of the tenancy and it shows a pattern of failure to pay all the rent due.
12. The written representations of the Applicants contain a number of emails between the parties showing that the Respondent had, at various times, offered to make payments in respect of the arrears of rent due.
13. Miss Przenioslo said that the offers of payments to reduce the arrears had not materialised into actual payments made.
14. The written representations of the Respondents contain a considerable amount of detail about their family and medical situation together with information about their financial position. The representations state that much of what is stated was not relevant to the claim for payment but contained an acknowledgement of the debt and an offer to repay it at the rate of £20 per week.
15. In evidence, Mr Samp said that he does not *“have any problem with the order”* but that it would need to relate to the Respondents’ budget.
16. In evidence, the Respondents made the offer to pay the outstanding sum at £20 per week and could afford no more because they had debts. Miss Przenioslo said that this was completely unacceptable since it would take *“twenty five years”* to repay. She said that she considered it significant that some of the arrears of rent were accrued when the Respondents were in receipt of Housing Benefit from the Council but had not passed the payments to their landlord.
17. The Respondents stated that they would hope to be in the position to pay more but could not know when that would be.

18. Miss Przenioslo said that, in January 2022, the Respondents had promised to pay £200 or £250 per month in reduction of the arrears but had not done so. She said that, if this had been done, almost half the debt would have been repaid by now.
19. Mr Samp said that the arrears had accrued because he did not understand the system and that his benefits had been reduced when he had got some work.
20. Towards the end of the Hearing, Mr Samp said that the Respondents could offer to pay the debt at the rate of £30 per week and that, if this was not accepted, he *“would go to the European Court.”*
21. Miss Przenioslo said that she considered that she could not rely on any offers made by the Respondents especially when they had earlier stated that they could not afford to make payments of more than £20 per week. She said that she would leave the matter to be decided by the tribunal.

### **Discussion and Determination**

22. This was an application for an order of payment. The Respondents accepted that the debt is due but were seeking time to pay.
23. No application for a time to pay direction had been submitted by the Respondents.
24. The Respondents made no representations that the debt was not due and the tribunal made the order of payment in terms of the application. Before doing so, the tribunal considered whether or not it might be appropriate to adjourn proceedings to allow the Respondents to submit an application for a Time To pay Direction. It decided that it would not be appropriate. The offer to repay the debt of £20 per month was impractical and the tribunal would not have made such a Time To Pay Direction. In view of the rather late submission of Mr Samp that the Respondents could pay the debt at the rate of £30 per week when they had maintained throughout the Hearing, and in their written representations, that they could afford no more than £20 per month, the tribunal saw no reason to postpone making the payment order. It was a matter for the Respondents if, at some future point, they wanted to make an application for Time to Pay Order if a Charge was served on them by the Applicants.

### **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.**

**Martin J. McAllister  
Legal Member  
3<sup>rd</sup> October 2022**