



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)**

**Chamber Ref: FTS/HPC/CV/22/1690**

**Re: Property at 10 Sandport Close, Kinross, KY13 8FZ (“the Property”)**

**Parties:**

**Mrs Verity Thwaites, 3 Broomcourt, Kinross, KY13 8AH (“the Applicant”)**

**Mr Colin Payne, Flat 4 Bishop View, Gairneybridge, Kinross, KY13 8GH (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (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 £2,625 should be made in favour of the Applicant, payable by instalments in terms of the Time to Pay Direction granted.

**Background**

1. By application lodged on 31 May 2022, the Applicant sought a payment order in the sum of £3,150 against the Respondent in respect of rent arrears accrued in respect of the Property, all in terms of Rule 111 of the Regulations. Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement.
2. A Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations on 27 July 2022. A copy of the Application and supporting documentation, together with details of the Case Management Discussion (“CMD”) fixed were served on the Respondent by Sheriff Officer on 16 August

2022. The last date for written representations to be lodged by the Respondent was 5 September 2022. No representations were lodged by the Respondent.

### **Case Management Discussion**

3. The CMD took place on 3 October 2022 at 2pm by telephone conference call. Both parties were in attendance and participated in the CMD.
4. After introductory remarks by the Legal Member, the Applicant confirmed that in terms of the Application, she was seeking a payment order in the sum of £3,150 in respect of rent arrears which the Respondent had accrued during the period November 2021 and May 2022. It was noted that rent payments had been missed for November, December, February, March, April and May, although one monthly payment of the rent of £525 had been made in January 2022. The Applicant explained that since then, following the Respondent vacating the Property, she had recovered the full tenancy deposit of £525 from the tenancy deposit scheme which had not been contested by the Respondent, so that sum should be deducted from the £3,150 originally sought. It was noted that this left a balance being sought by the Applicant of £2,625.
5. The Respondent confirmed that he had not lodged any written response with the Tribunal but was attending today to try and sort this out. He confirmed that he did not dispute anything that the Applicant had stated and that he agrees that the figure now claimed is due. He is happy to pay that amount but wanted to arrange to pay this up at a rate that he can afford. In response to a question from the Legal Member, he indicated that he had not received a 'time to pay' application form with the Tribunal papers but is willing to discuss this today to try and reach agreement. The Legal Member advised that she had noted from the supporting papers lodged by the Applicant that the parties had previously been in email communication regarding the arrears and that, although he had provided an explanation for the arrears, he appeared to have made a payment offer previously which he had not then adhered to. The Respondent confirmed that this was the case and that he had over-stretched himself previously. For this reason, he wished to offer to pay at the rate of £200 per month which he stated he could afford as he is still in employment. He calculates that this would clear the debt in around a year. He proposed to make his first payment on 27 October 2022 which coincides with his pay date and thereafter on the 27<sup>th</sup> of each month. He confirmed that he still has the Applicant's bank account details and would make the payments direct into her bank account.
6. The Applicant indicated that she is agreeable to this offer and would prefer the matter to be resolved in this way.
7. The Legal Member explained how this would work in practice, that an order for payment could be made by the Tribunal containing details of the 'time to pay' direction and that the Tribunal would then have no further part to play in the matter. It was confirmed to the Respondent that he could make additional payments and pay of the balance more quickly if he was able to do so but that he must maintain the agreed payments as a minimum, as otherwise, if he were

to miss two instalments, the whole remaining balance would become payable to the Applicant. Likewise, the Applicant was informed that if the Respondent failed to adhere to the agreed payments, she would require to take her own advice on enforcement of the order against the Respondent. Both parties were advised to communicate with one another if any future issues arose. Both parties confirmed that they understood the position and would like the Application disposed of in this way.

8. Given that parties were in agreement on the matter, the Legal Member indicated that she would grant the order for payment in the sum claimed today, subject to a time to pay direction in the agreed terms.

### **Findings in Fact**

1. The Applicant is one of the Executors of her late father, who was the owner and landlord of the Property.
2. The Respondent was the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 2 April 2021 and ended in or around May 2022 when the Respondent vacated and moved elsewhere.
3. The rent in terms of the tenancy was £525 per calendar month.
4. When the tenancy ended, it is a matter of agreement that the Respondent was in arrears of rent amounting to £3,150.
5. The Applicant subsequently recovered the tenancy deposit of £525 which falls to be deducted from the rent arrears, leaving an agreed balance owing by the Respondent of £2,625.
6. The Respondent sought time to pay at the CMD and agreement was reached between the parties on this matter.

### **Reasons for Decision**

1. The Legal Member was satisfied from the information contained in the application and supporting documentation, together with the oral submissions made by both parties at the CMD that the sum of £2,625 in unpaid rent is due and resting owing by the Respondent.
2. The Legal Member was also satisfied in the circumstances that a Time to Pay Direction could properly be made, in terms of the Debtors Scotland Act 1987, as amended.
3. The Legal Member concluded that there being agreement on both matters between the parties, that the case did not require to go to an evidential hearing

and that an order for payment in that sum, subject to a Time to Pay Direction, could properly be made at the CMD.

### **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.**

Nicola Weir

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**Legal Member: Nicola Weir**

**3 October 2022**  
**Date**