



**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/23/1355**

**Re: Property at 43 Chesnut Crescent, East Kilbride, G75 9EL (“the Property”)**

**Parties:**

**Mr Alexander Brown, Mrs Julie Brown, 22 Lockhart Avenue, Lanark, ML11 9ZQ (“the Applicant”)**

**Susan Gray, Mr Michael Reilly, 333 Mallard Crescent, East Kilbride, G75 8UQ; 153 Troon Avenue, East Kilbride, G75 8TL (“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 against the Respondent in favour of the Applicant in the sum of £2,647.22 be made.**

**Background**

1. By application dated 26 April 2023, the Applicant sought a payment order in the sum of £2,647.22 against the Respondent in respect of rent arrears arising from a former tenancy of the Property, in terms of Rule 111 of the Regulations.
2. Supporting documentation was submitted in respect of the application, including a Rent Statement and a copy of the Tenancy Agreement.
3. A Legal Member of the Tribunal with delegated powers from the Chamber President subsequently issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations on 22 June 2023. A Case Management Discussion

("CMD") was assigned for 22 August 2023. Notification of the CMD and copies of the case papers were served on the Respondents at their separate addresses on 25 July 2023. Written representations were to be lodged by 14 August 2023.

4. On 14 August 2023, Money Matters of South Lanarkshire Council emailed the Tribunal on behalf of the First Respondent, Miss Gray and sought a time to pay direction on her behalf. They indicated that they had not had sufficient time to complete the Time to Pay Application Form issued by the Tribunal but did provide a schedule of the First Respondent's income and expenditure and put forward her offer to pay the outstanding sum at the rate of £10 per month.

### **Case Management Discussion**

5. The CMD took place by telephone conference call on 22 August 2023 at 2pm. The Applicant was represented by Miss Rachel Trevithick of The Property Store, the Applicant's letting agent. Both Respondents were also present.
6. After introductions and introductory remarks by the Legal Member, there was discussion regarding the information submitted prior to the CMD on behalf of the First Respondent and the payment offer which had been made. The Applicant's representative indicated that they had received this communication from Money Matters and had already been in contact with Money Matters to advise that the offer of £10 per month was not acceptable but that they had not heard anything further. She explained that it would take around 22 years to pay off the debt of £2,647.22 at that rate. The Applicant had previously been willing to accept payment at an initial rate of £25 per month and the First Respondent had agreed to pay this, with her first payment being due by 22 May 2023. However, she failed to make that payment and no payments have been made since.
7. It was noted that the First Respondent was the tenant of the Property and lived there from its commencement on 25 October 2018 until April 2023 when she vacated. The Second Respondent, Mr Reilly, had signed the tenancy as Guarantor and it was stated within the Tenancy Agreement that he was jointly and severally liable for payment of the rent and other obligations of the tenancy.
8. Reference was made to the Rent Statement lodged with the Tribunal and it was noted that it showed a balance due as at March 2023 of the sum sought of £2,647.22. The Respondents confirmed that they did not dispute that this amount was owing. It was noted that the rent account had always been in arrears since its outset in October 2018 but that it appeared that the rental payments being made towards rent reduced significantly from around August 2022. The Legal Member asked if there had been a change in the First Respondent's financial circumstances around then but she stated that she could not recall. She had been served with a Notice to Quit in October 2022 and had had to go down the homeless route when she left the Property in April 2023. She confirmed that she had previously agreed to pay the arrears off at the rate of £25 per month but that her mental health had deteriorated due to

stress and she had not managed to make the payment. The First Respondent was asked if she was in a position to offer an increased amount, given the Applicant's position and the time it will take to pay off the arrears. However, she indicated that she was not and that £10 per month is the most she can offer. She confirmed that she lives with her 16 year old daughter who is financially dependent and that she has two other children, who live with Mr Reilly. The First Respondent has been in receipt of benefits for several years.

9. The Second Respondent was asked if he was in a position to make an offer towards the outstanding sum, in addition to the offer of £10 per month offered by Miss Gray. However, Mr Reilly indicated that he was not as he is not now working, is in receipt of benefits, has two children living with him and his own house to pay for. He accepts that he signed the Tenancy Agreement as Guarantor to help Miss Gray secure the lease but he had not appreciated that the tenancy and guarantee would be open-ended like this. He is not now in a financial position to be a guarantor as he is no longer working. The Legal Member explained that the guarantor clause in the Tenancy Agreement makes it clear that he is jointly and severally liable for rent arrears and that this means that the Applicant can seek to recover the debt from both Respondents or from either one of them. Mr Reilly accepts that he should have taken advice at the time regarding the implications of being guarantor and may seek legal advice about his situation going forward.
10. In response to questions from the Legal Member, the Applicant's representative confirmed that no further payments had been received into the rent account since the date of the Rent Statement. As to the rental deposit, she stated that the property had essentially been abandoned by the First Respondent and that the Property was damaged and had not been properly cleared. Whilst, the Applicant had recovered the full rental deposit, the repair and other costs exceeded the deposit amount, so there was no balance left over to be applied to the rent arrears. Their position in respect of the offer to pay at the rate of £10 per month remained the same. She asked for a payment order to be granted in respect of the full sum owing.
11. The First Respondent was asked for her comments regarding the rental deposit and she confirmed that she had been advised similarly by the tenancy deposit company. She did not contest the full deposit being retained by the Applicant.
12. The Legal Member advised parties at the end of the CMD that the application for time to pay at the rate of £10 per month was refused and that a payment order in the full sum would be granted.

### **Findings in Fact**

1. The Applicant is the owner and former landlord of the Property.
2. The First Respondent was the tenant of the Property by virtue of a Private Residential Tenancy commencing on 25 October 2018.

3. The Second Respondent was Guarantor in respect of said Private Residential Tenancy.
4. The monthly rent in terms of the tenancy was £625 per calendar month.
5. The rental account was in arrears throughout the tenancy and rental payments were erratic.
6. When the First Respondent vacated the Property in or around April 2023, the rent arrears outstanding amounted to £2,647.22.
7. The First Respondent offered to make payment towards the arrears at the rate of £25 per month after she vacated but she failed to make any payments.
8. The Respondent has been called upon to make payment but have failed to do so.
9. The sum of £2,647.22 remains due and resting owing by the Respondent to the Applicant.
10. The Respondent admits the claim.
11. The First Respondent offered to pay the amount outstanding at the rate of £10 per month in terms of the Time to Pay Application which was not accepted by the Applicant.
12. The Second Respondent did not make any offer to pay.

### **Reasons for Decision**

1. The Respondent did not dispute the Applicant's claim. The Legal Member was therefore satisfied that the application did not require to be continued to an Evidential Hearing.
2. The Legal Member was further satisfied from the information contained in the application and supporting documentation, together with the oral submissions made by the Applicant's representative at the CMD that the balance of the sum claimed in unpaid rent in respect the former tenancy of £2,647.22 is due and resting owing by the Respondent and that an order for payment in that sum could properly be made at the CMD.
3. Having considered the information contained in the application for a time to pay direction submitted on behalf of the First Respondent, together with the oral submissions made by the Applicant's representative and both Respondents at the CMD, the Legal Member was not satisfied that it would be reasonable in all of the circumstances to make a Time to Pay Direction in terms of the Debtors (Scotland) Act 1987, as amended, allowing the Respondent to pay the amount due by instalments of £10 per month. In doing so, the Legal Member had regard

to the factors listed in Section 1A of the 1987 Act. Whilst the Legal Member accepted the Respondents' position that they were both in receipt of benefits, have dependent children, separate households and that their finances are tight, she did not consider that the offer of payment at the rate of £10 per month was reasonable, given that it would take a period of around 22 years for the debt to be paid at that rate. The Legal Member also considered the fact that the First Respondent had entered into a payment arrangement with the Applicant fairly recently for payment at the rate of £25 per month but subsequently reneged on that.

## **Decision**

The Legal Member accordingly determines that an order for payment by the Respondent of the sum of £2,647.22 should be made in favour of the Applicant and refuses the application for a Time to Pay Direction.

## **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.**

# **N. Weir**

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**Legal Member/Chair**

**22 August 2023**  
**Date**