



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/CV/20/0534

**Re: Property at 15 Kenilworth Court, Holytown, North Lanarkshire, ML1 4NT
("the Property")**

Parties:

**Innovation Investments UK Ltd, c/o Jewel Homes Ltd, Atrium Business
Centre, North Caldeen Road, Coatbridge, ML5 4EF ("the Applicant")**

**Mr Stuart Kennedy, Unknown, Unknown ("the First Respondent"); Lisa
McKay, 131 Bellshill Road, Motherwell, ML1 3SX ("the Second Respondent")
(together "the Respondents")**

Tribunal Members:

Andrew Upton (Legal Member)

Decision (in absence of the First Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that the Respondents are jointly and severally liable to
make payment to the Applicant in the sum of THREE THOUSAND SIX
HUNDRED AND SEVENTY FIVE POUNDS (£3,675.00) STERLING; makes a Time
to Pay Direction in respect of the Second Respondent requiring that she
makes payment to the Applicant in instalments of £65.00 per month.**

FINDINGS IN FACT

- 1. The Applicants were the landlords, and the Respondents the tenants, of the
Property under and in terms of a Private Residential Tenancy which
commenced on 16 May 2019.**
- 2. The rent was £525 per month.**

3. The Respondents failed to make payment of rent in respect of the period 16 July 2019 until 15 February 2020.

FINDINGS IN FACT AND LAW

1. The Respondents are under contractual obligation, jointly and severally, to make payment to the Applicant in the sum of £3,675.
2. In all of the circumstances, it is reasonable that the Tribunal makes a Time to Pay Direction in respect of the Second Respondent requiring her to pay the Applicant the sum ordered at a rate of £65 per month.

STATEMENT OF REASONS

1. This Application called for its Case Management Discussion on 8 December 2020 by teleconference call. The Applicant was represented by Miss Young. The First Respondent was not present or represented. The Second Respondent was personally present.
2. This Application seeks payment of rent arrears in the sum of £3,675 together with interest thereon at the rate of 8% per annum from the date of the order. The Second Respondent accepts that this sum is due, and has lodged a Time to Pay Application. That Time to Pay Application is opposed by the Applicant.
3. There were two issues upon which I required to be addressed:-
 - a. Whether the First Respondent is liable to the Applicants for payment of the arrears; and
 - b. Whether it is reasonable to make a Time to Pay Direction in respect of the Second Respondent.
4. In advance of the CMD, the Respondents had each written to the Tribunal asserting that the First Respondent had removed from the Property in or around August 2019, and prior to any arrears having fallen due. The First Respondent chose not to attend the CMD, which was not entirely helpful for determining whether he wished to assert that he was not liable for the arrears or the legal basis for such an assertion.
5. That being said, I was conscious of the need to have regard to the overriding objective in Rule 2 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure; which is to deal with proceedings justly. I am also conscious that I have the power to do anything at a CMD that I can do at a Hearing, including make a decision (Rule 17). I therefore invited Miss Young to explain why the Applicant considered that Mr Kennedy remained liable. Her submission was that the First Respondent was a party to the tenancy agreement, which was a Private Residential Tenancy. He had not given notice to leave, nor had there been any variation of the PRT to remove him as a tenant and allow the Second Respondent to remain as a tenant. In the circumstances, his contractual liability remained. She also highlighted that the rent arrears had started to accrue in July 2019 and so, insofar as the First

Respondent left in August 2019, there were rent arrears outstanding at that point.

6. I asked the Second Respondent to provide her understanding of matters. She advised me that she did not believe that the First Respondent had taken any steps to end the tenancy, but that she had personally spoken to two separate individuals at the letting agent, Jewel Homes, to advise that the First Respondent had left. The Second Respondent was keen to stress that responsibility for these arrears rested with her.
7. In the circumstances, I am satisfied that the First Respondent remained contractually liable for payment of his arrears. There is no suggestion that he had given Notice to Leave as required by the Private Housing (Tenancies) (Scotland) Act 2016; far less that the Applicant had agreed to vary the PRT. That being the case, he remains contractually liable.
8. Against that background, and having regard to the Second Respondent's admission that the rent arrears were due, I am satisfied that both of the Respondents are liable, jointly and severally, for payment to the Applicant of the sum of £3,675. I am also satisfied that, in terms of Rule 41A of the Rules of Procedure, that I may order that interest runs on the order from the date of the decision at such rate as I consider appropriate. I consider that it is appropriate that the judicial rate of 8% per annum should apply, and will order that interest runs on the principal sum at the rate of 8% per annum from 8 December 2020.
9. The discussion then turned to the Second Respondent's Time to Pay Application. In terms thereof, the Second Respondent offered to pay £50 per month until the sum due was repaid. She specified that her income was £1,500 per month, of which £500 was in respect of part-time employment and £1,000 was in respect of benefits. Her outgoings were noted as being approximately £1,590 per month, which suggested that there was a shortfall of £90 per month to cover her outgoings without taking this debt into consideration. When asked about the affordability of the proposal, the Second Respondent advised that she had taken debt advice from the Citizens Advice Bureau, and felt confident that she could cut her cloth in order to afford the proposed £50 per month. She is a single mother of two young children (aged 3 years and 10 months respectively). She had suffered from poor mental health recently, but was working to recover from what had been a dark spell in her life.
10. On behalf of the Applicant, Miss Young opposed the Time to Pay Application and invited me to grant an open order. She said that the proposal would take over 6 years to pay, which was unreasonable. She suggested that £200 per month would be more reasonable, which would take about 18 months to pay off the debt. Miss Young also submitted that the Applicants had incurred over £2,000 of costs to reinstate the property to a lettable condition following the Second Respondent's removal from the property, and that ought to be taken into consideration.

11. In terms of section 1 of the Debtors (Scotland) Act 1987:-

“1.— Time to pay directions.

(1) Subject to subsections (3) to (5) below and to section 14 of this Act, on an application by the debtor, the court or the First-tier Tribunal, on granting decree for payment of any principal sum of money, shall, if satisfied that it is reasonable in all the circumstances to do so, and having regard in particular to the matters mentioned in subsection (1A) below, direct that any sum decerned for in the decree (including any interest claimed in pursuance of subsections (6) and (7) below) or any expenses in relation to which the decree contains a finding as to liability or both such sum and such expenses shall be paid—

- (a) by such instalments, commencing at such time after the date of intimation by the creditor to the debtor of an extract of the decree containing the direction, payable at such intervals; or
- (b) as a lump sum at the end of such period following intimation as mentioned in paragraph (a) above,

as the court or the First-tier Tribunal may specify in the direction.

(1A)The matters referred to in subsection (1) above are—

- (a) the nature of and reasons for the debt in relation to which decree is 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; and
 - (e) the reasonableness of any refusal by the creditor of, or any objection by the creditor to, any proposal by the debtor to pay that debt.
- (2) A direction under subsection (1) above shall be known as a “time to pay direction”.
- (3) Where a court or the First-tier Tribunal grants a decree which contains a finding as to liability for expenses but does not at the same time make a time to pay direction, then (whether or not the decree also decerns for payment of the expenses), it shall not at any time thereafter be competent for the court or the First-tier Tribunal to make a time to pay direction in relation to those expenses.

(4) Where a court or the First-tier Tribunal grants a decree which contains a finding as to liability for expenses and makes a time to pay direction in relation to those expenses but—

- (a) does not decern for payment of the expenses; or
- (b) decerns for payment of the expenses as taxed by the auditor of court or auditor of the Court of Session but does not specify the amount of those expenses,

in relation to so much of the time to pay direction as relates to the expenses, the reference in subsection (1) above to the date of intimation of an extract of the decree containing the direction shall be treated as a reference to the date of intimation of an extract of a decree decerning for payment of the expenses, being an extract specifying their amount.

(5) It shall not be competent for the court or the First-tier Tribunal to make a time to pay direction—

- (a) where the sum of money (exclusive of any interest and expenses) decerned for exceeds £25,000 or such amount as may be prescribed in regulations made by the Lord Advocate;
- (b) where the decree contains an award of a capital sum on divorce or on the granting of a declarator of nullity of marriage;
- (c) in connection with a maintenance order;
- (cc) in connection with a liability order within the meaning of the Child Support Act 1991.;
- (d) in an action by or on behalf of the Commissioners for Her Majesty's Revenue and Customs for payment of any sum recoverable under or by virtue of any enactment or under a contract settlement;
- (da) in an action by or on behalf of Revenue Scotland for payment of any sum recoverable under or by virtue of the Revenue Scotland and Tax Powers Act 2014 (asp 16) or any other enactment in respect of a devolved tax, under a contract settlement or under a settlement agreement,
- (f) in an action for payment of—
 - (ii) car tax due under the Car Tax Act 1983

(6) Without prejudice to section 2(5) of this Act, interest payable under a decree containing a time to pay direction (other than interest awarded as

a specific sum in the decree) shall not be recoverable by the creditor except in accordance with subsection (7) below.

(7) A creditor who wishes to recover interest to which subsection (6) above applies shall serve a notice on the debtor, not later than the date prescribed by Act of Sederunt or the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 occurring—

(a) in the case of a direction under subsection (1)(a) above, before the date when the last instalment of the debt concerned (other than such interest) is payable under the direction;

(b) in the case of a direction under subsection (1)(b) above, before the end of the period specified in the direction,

stating that he is claiming such interest and specifying the amount of the interest claimed.

(8) Any sum paid by a debtor under a time to pay direction shall not be ascribed to interest claimed in pursuance of subsections (6) and (7) above until the debt concerned (other than such interest) has been discharged.

(8A) In paragraph (d) of subsection (5) above, “*contract settlement*” means an agreement made in connection with any person's liability to make a payment to the Commissioners for Her Majesty's Revenue and Customs under or by virtue of any enactment.

(8B) In paragraph (da) of subsection (5)—

“*contract settlement*” means any agreement made in connection with any person's liability to make a payment to Revenue Scotland under or by virtue of the Revenue Scotland and Tax Powers Act 2014 (asp 16) or any other enactment in respect of a devolved tax,

“*devolved tax*” has the meaning given by section 80A(4) of the Scotland Act 2012 (c. 46),

“*settlement agreement*” has the meaning given by section 246(1) of the Revenue Scotland and Tax Powers Act 2014 (asp 16).”

12. The Tribunal's role is to determine whether it is reasonable to make a Time to Pay Direction where a party applies for time to pay. In this case, having regard to all of the circumstances noted above, I am satisfied that it is reasonable to make a Time to Pay Direction, but that the sum of £50 per month is not reasonable for that Direction. I am conscious that there is a fine balance between given the Second Respondent time to pay to allow her some

breathing space within which to meet her obligations and continue her financial recovery, whilst also not requiring the Applicants to wait an inordinate period of time for payment. Against that background, I will make a Time to Pay Direction requiring the Second Respondent to pay the order at a rate of £65 per month. That will see the Second Respondent repay the sum due within 5 years on the assumption that she does not default and having no regard to whether the First Respondent makes any payment hereafter.

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.



Legal Member/Chair

8 December 2020
Date