

Housing and Property Chamber
First-tier Tribunal for Scotland



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 71 of the of the Private
Housing (Tenancies) (Scotland) Act 2016**

Chamber Ref: FTS/HPC/CV/21/1351

Re: Property at 86 Rosebank Terrace, Glasgow, G69 7SG (“the Property”)

Parties:

Umali Limited, 77 Victoria Street, Larkhall, ML9 2BL (“the Applicant”)

**Peter Harkins, Mr Chris Harkins, 14 Elliot Terrace, Falkirk, FK2 7RT;
UNKNOWN, UNKNOWN (“the Respondent”)**

Tribunal Member:

Karen Kirk (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”):

- 1. Grants a Payment Order against the Respondent for the sum of £4683.33, and**
- 2. Grants a time to pay direction under Section 1(1) of the Debtors (Scotland) Act 1987, in the following terms:**

The respondent is required to pay the sum of £500 per calendar month until the full amount has been paid. The first payment must be made no later than 21st February 2022 after intimation of this Order.

Introduction

This Case Management Discussion concerned an application for a payment order dated 3 June 2021 and brought in terms of Rule 111 (Application for civil proceedings in relation to a private residential tenancy) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended. The

purpose of the Case Management Discussion was explained to parties and took place by telephone due to the Covid-19 pandemic.

Attendance and Representation

The Applicant's directors, Mr Graeme Murray and Mr Rok Lasan were both present. The telephone reception of both was difficult and both agreed that they would be act separately and together in the Hearing.

The Respondent Mr Chris Harkins, was personally present. The Respondent Peter Harkins was not present. To date Mr Peter Harkins, has not taken part in proceedings.

Background

This Application has called on a number of occasions and in November 2021 where parties sought to continue the Application to reach an amicable payment arrangement between parties. On the last occasion when the matter called before the Tribunal in December 2021 Tribunal determined that it would be appropriate and in the interests of justice to allow the Respondent to lodge a Time to Pay Application. There was no objection to this by the Applicant who agreed a Time to Pay application would be appropriate. The Tribunal arranged issued directions to allow same to be progressed.

Preliminary Matters

The Tribunal confirmed a number of preliminary matters with parties. The Tribunal noted that a completed Time to Pay Application had be lodged with the Tribunal by the Respondent seeking to make payment of £500 per calendar month with the first payment being due on 20th February 2022.

The Applicant's had lodged an updated rent statement with the Tribunal on 25th January 2022 seeking to amend the payment order sought to £4683.33 as the Respondent had made a payment of £300 to the rent balance in December 2021.

The Applicant's also sought to amend their claim as stated in their email of 25th January 2022 to include a new damage to the property claim of significant value. Their submission was that the matter was clearly related to the same issue. The Tribunal considered the terms of the amendment sought and had no difficulty in amending the sum sought to £4683.33 for rent arrears, which was agreed by the Respondent. However on the questions of alleged damage to property which the Applicant's say came to their knowledge when the Respondent left the property in December 2021 the Tribunal considered it was not in accordance with the overriding objective to allow a late and substantial amendment to what the Tribunal's considered in their discretion was a new matter between the parties. The amendment application was sparse and did not constitute enough elements to proceed at present in any event. Whereas the matter of the rent arrears and the application at present was capable of resolution and

agreement. The Tribunal refused to amend the application to include a new head of claim for damage to property for these reasons.

There were no other preliminary matters raised.

Summary of Discussion

For the Applicant's

The Applicant's were under the impression that the Time to Pay application had been agreed. The Tribunal noted that despite communication and emails to the Tribunal since December 2021 both Applicants and directors present agreed that they were in full agreement to instalments of £500 per calendar month commencing on 20th February 2022 until payment.

For the Respondent

The Respondent stated he accepted he was liable for the amended sum of £4683.33 and wished to make payment as per the terms of his completed time to Pay application.

Findings in Fact

1. The Tribunal was satisfied that a decision could be made at the CMD based on the information before the Tribunal. Both the Respondent, Mr Chris Harking and the Applicant's were present and there was an agreed position at the Hearing. It was in the interests of the parties having regard to the Overriding objective to proceed to now determine the Application.
2. The Applicants sought an Order for Payment. By rent statement lodged on 25th January 2022 they sought a Payment Order of £4683.33.
3. The Tribunal was satisfied that the Applicants were the heritable proprietors of the Property as a copy title was lodged with the Application.
4. There was a lease in place between parties with the rental payment in terms of this agreement being £575 per calendar month.
5. Rent due by the Respondent to the Applicant in terms of the rent statement lodged was £4683.33.
6. The Tribunal was satisfied on balance that it was appropriate to grant a Payment Order for £4683.33
7. The Tribunal considered it appropriate and by agreement of both parties to grant a time to pay direction under Section 1(1) of the Debtors (Scotland) Act 1987, in the following terms:

The respondent is required to pay the sum of £500 per calendar month until the full amount has been paid. The first payment must be made no later than 21st February 2022 after intimation of this Order.

8. Accordingly, in terms of Section 11 of the 2016 Act the Tribunal granted a Payment Order against the Respondents.

Reasons for Decision.

The Tribunal heard from both parties who were in agreement to a payment order with the specified Time to Pay application. The Tribunal granted the Time to Pay application by agreement. The Tribunal noted the offer was reasonable and was in fairness to both parties having regard to the overriding objective.

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.

K Kirk

7th February 2022

Legal Member/Chair

Date