



**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/20/1717

**Re: Property at 526 Leyland Road, Wester Inch, Bathgate, West Lothian, EH48
2UQ (“the Property”)**

Parties:

**Miss Victoria Brake, c/o 1 Howden House Steadings, Livingston, West Lothian,
EH54 6FN (“the Applicant”)**

**Miss Lauren Travers, 16 Mossend Drive, West Calder, West Lothian, EH55 8QG
 (“the Respondent”)**

Tribunal Members: Mr Andrew Upton (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Respondent was liable to make payment to the
Applicant in the sum of TWO THOUSAND TWO HUNDRED AND SEVENTY
SEVEN POUNDS AND SEVENTY FOUR PENCE (£2,277.74) STERLING and
made a Time to Pay Direction under the Debtors (Scotland) Act 1987 requiring
the Respondent to make payment to the Applicant at the rate of £50.00 per
month.**

FINDINGS IN FACT

- 1. The Applicant was the landlord, and the Respondent the tenant, of the
Property under and in terms of a Private Residential Tenancy Agreement
which commenced on 21 June 2019.**
- 2. The rent payable by the Respondent to the Applicant was £695 per month.**

FINDINGS IN FACT AND LAW

1. The Respondent is under contractual obligation to make payment to the Applicant in the sum of £2,277.74 in respect of rent arrears.
2. In all of the circumstances, it is reasonable to make a Time to Pay Direction that the Respondent make payment to the Applicant at the rate of £50 per month.

STATEMENT OF REASONS

1. On 14 August 2020 the Applicant lodged this Application in terms of which she seeks payment from the Respondent of rent arrears amounting to £2,277.74. A Case Management Discussion was assigned to take place on 16 October 2020.
2. On 29 September 2020, the Respondent lodged an application for a Time to Pay Direction, in terms of which she admitted the debt due under the application and sought a direction to pay at a rate of £50 per month. She set out her income and expenditure, in terms of which she seemed only to have disposable income of £7 per month. She indicated that she was in part-time employment, but currently on maternity leave. She had no income from her employment, but was in receipt of universal credit.
3. On 6 October 2020, the Applicant responded to the Respondent's application stating that she was content with the Respondent's proposal. In light of this, I excused the parties from attending at the Case Management Discussion.
4. The Respondent admits that the debt is due, and I will therefore make an order for payment of £2,277.74. The question now turns to the application for a Time to Pay Direction.
5. 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]⁹ 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).”

6. Having regard to the factors set out in section 1A, I am satisfied that it is reasonable in all of the circumstances to grant the Time to Pay Direction. Accordingly, I will direct that the Respondent makes payment to the Applicant at the rate of £50 per month.

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.

Andrew Upton
Legal Member/Chair

16/10/2020

Date