



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 70(1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/20/1933**

**Re: Property at No 4 Craichie Cottages, Parton, Castle Douglas, DG7 3NP (“the Property”)**

**Parties:**

**Mr Oscar Yerburgh, Barwhillanty, Parton, Castle Douglas, DG7 3NS (“the Applicant”)**

**Ms Cheryl Irvine, No 4 Craichie Cottages, Parton, Castle Douglas, DG7 3NP (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment of Six thousand two hundred pounds and fifty pence (£6200.50) in favour of the Applicant against the Respondent**

**Background**

- 1 By application to the Tribunal, the Applicant sought an order against the Respondent for unpaid rent arrears. In support of the application the Applicant submitted Tenancy Agreement between the parties, Form AT5, Notice to Quit and Form AT6. Following a request from the Tribunal the Applicant submitted a Rent Statement confirming arrears of £6200.50 were outstanding as at 1 September 2020.
- 2 By Notice of Acceptance of Application dated 19 October 2020 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 1 December 2020. Due to the imposition of restrictions arising from the Covid-19 pandemic a direction was

issued to the parties by the Chamber President confirming that the Case Management Discussion would take place by teleconference.

- 3 A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was served upon the Respondent by Sheriff Officers.
- 4 On 16 November 2020 the Tribunal received a time to pay application from the Respondent. In terms of the application the Respondent admitted liability for the debt and offered payment at the rate of £50 per fortnight. She confirmed that she was unemployed due to health reasons and resided with her son who she cared for. The application noted a net income of £278 per week and outgoings of £914.30 per month. The Respondent therefore sought a time to pay direction at the rate of £50 per fortnight.
- 5 The time to pay application was intimated to the Applicant. His agent Mr Turnbull from Gillespie Gifford and Brown Solicitors submitted a response confirming that the Applicant was not content with the proposal for time to pay on the basis that it did not include the rent for the property and arrears would therefore continue to accrue. Furthermore it would take more than four and a half years to clear the arrears at the rate proposed. The Applicant's agent confirmed that the Respondent had been unwilling to engage with the Applicant on the issue.

### **The Case Management Discussion**

- 6 The Case Management Discussion took place by teleconference on 1 December 2020. Mr Turnbull appeared on behalf of the Applicant. The Respondent did not attend nor was she represented.
- 7 The Legal Member noted that the Respondent had submitted a time to pay application and was therefore aware of the proceedings, having had service of the application paperwork by Sheriff Officers. On that basis she determined to proceed with the Case Management Discussion in the Respondent's absence.
- 8 Mr Turnbull advised that the Applicant would be objecting to the time to pay application if the tenancy were continuing as the payments did not cover the monthly rent. However on the basis that the Tribunal had granted an order for repossession of the property under the conjoined application EV/20/1931 the tenancy would come to an end. In those circumstances that Applicant would not object to a time to pay direction at the rate proposed by the Respondent, being £50 per fortnight.

## **Findings in Fact and Law**

- 9 The parties entered into a Tenancy Agreement dated 24 February 2017 in respect of the property.
- 10 In terms of Clause 2 of the said Tenancy Agreement the Respondent undertook to make payment of rent to the Applicant at the rate of £475 per month.
- 11 The Respondent continues to reside in the property albeit the Tribunal granted an order for repossession in the conjoined application EV/20/1931 at a Case Management Discussion on 1 December 2020.
- 12 The last payment made to the rent account by the Respondent was a payment of £156 on 1 September 2019.
- 13 As at 1 September 2020 arrears in the sum of £6200.50 were outstanding.
- 14 Despite repeated requests from the Applicant the Respondent has refused or delayed in making payment of the outstanding sum.
- 15 The Respondent is due to pay the sum of £6200.50 to the Applicant in terms of the Tenancy Agreement between the parties.

## **Reasons for Decision**

- 16 Having considered the written representations from the parties and the verbal submissions at the Case Management Discussion the Tribunal determined it could make a determination of the application and that to do so would not be prejudicial to the interests of the parties. The Respondent had been given the opportunity to attend the Case Management Discussion but had chosen not to do so. In any event she had stated in her time to pay application that she admitted the debt was due. There were therefore no identified issues in dispute and therefore no requirement to fix a hearing in the matter.
- 17 Having considered the terms of the tenancy agreement and rent statement produced by the Applicant, and based on its findings in fact, the Tribunal was satisfied that the Respondent was liable to pay the sum of £6200.50. Furthermore, on the basis that the Applicant had withdrawn his objection to the time to pay application, the Tribunal determined that a time to pay direction at the rate of £50 per fortnight would be reasonable in the circumstances.
- 18 The Tribunal therefore made an order in the sum of £6200.50 against the Respondent, subject to a time to pay direction requiring payment at the rate of £50 per fortnight.

## 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.

**Ruth O'Hare**

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Legal Member/Chair

1 December 2020  
Date