



**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014 and Section 1(1) of the Debtors (Scotland) Act 1987**

**Chamber Ref: FTS/HPC/CV/20/1768**

**Re: Property at 69 Reay Avenue, West Mains, East Kilbride, Glasgow, G74 1QT (“the Property”)**

**Parties:**

**Mrs Gail Farquhar, C/o The Property Store, 6 Hunter Street, East Kilbride, G74 4EJ (“the Applicant”)**

**Miss Cheryl Anne Crosbie, 39 Abercrombie Crescent, Calderwood, East Kilbride, G74 3DH (“the Respondent”)**

**Sarah O'Neill (Legal Member)**

**Decision (in absence of the parties)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment by the respondent of the sum of £4293.01 should be granted in favour of the applicant. The tribunal made a time to pay direction under Section 1(1) of the Debtors (Scotland) Act 1987, requiring the respondent to pay the sum of £50 per month until the full amount has been paid.**

**Background**

- 1. A case management discussion (CMD) was held by telephone conference on 20 October 2020, at which both the applicant’s solicitor and the respondent were present. At the CMD, the respondent stated that she had not seen the updated rent statement showing the rent due and the universal credit payments which had been made towards her rent. She undertook to complete a time to pay application and submit this prior to a continued CMD. The tribunal determined that in the interests of fairness to the respondent that the CMD should be continued to allow her to submit a time to pay application.**
- 2. A further CMD was later scheduled for 2 December 2020.**

3. An application for a time to pay direction under the Debtors (Scotland) Act 1987 dated 7 November 2020 was received from the respondent on 13 November 2020. In the application, the respondent stated that she admitted the applicant's claim against her. She requested a time to pay direction in relation to the debt at a rate of £50 per month.
4. On 10 November 2020, an email was received from the applicant's solicitor, Ms Kirstie Donnelly of Bannatyne Kirkwood France and Co, seeking to amend the application to increase the sum sought from £3975 to £4,293.01. This email was accompanied by an updated rent statement showing the outstanding arrears due as at 10 November 2020 to be £4293.01.
5. On 19 November 2020, a response to the time to pay direction application was received from Ms Donnelly. In the response, she stated that, while it would take the respondent a considerable amount of time to pay off the debt at the rate of £50 per month, the applicant was willing to accept the application given the respondent's financial circumstances, and the current pandemic and economic climate.
6. On 24 November 2020, the tribunal issued a direction to the parties. In the direction, the tribunal noted that the respondent's application for time to pay was dated 7 November 2020 and appeared to have been posted before the applicant's application to amend the sum sought to £4293.01 was submitted to the tribunal and copied to the respondent. The respondent was therefore required to confirm to the tribunal whether she agreed that she was due to pay to the applicant the amended sum of £4293.01, and whether she was requesting a time to pay direction in relation to that amount.
7. The direction also noted that 1) the application to amend the sum sought indicated that the applicant was seeking an order for the sum of £4293.01 together with interest from the date of the decision; and 2) clause 19.2 of the tenancy agreement between the parties provided for contractual interest to be paid at the rate of 8% per annum on outstanding sums due. It therefore required the applicant to confirm whether she was seeking an order for payment of the sum of £4293.01 together with interest at 8% from the date of the decision.
8. A response was received from the respondent on 25 November 2020 indicating that she accepted that she was due to pay to the applicant the amended sum of £4293.01, and that she wished to request a time to pay direction in relation to that amount. She also indicated that she accepted that she was due to pay contractual interest of 8% in terms of the tenancy agreement.
9. A response was received from Ms Donnelly on 25 November 2020 on behalf of the applicant, confirming that her instructions were to ask the tribunal to grant an order for the amended sum together with contractual interest at 8% per annum, and was content to accept the time to pay direction to pay that sum at the rate of £50 per month.

10. As the respondent admitted that she owed the sum claimed, and the applicant had accepted her offer to pay, the tribunal decided to grant the time to pay direction for the reasons set out below. The tribunal therefore considered that a further CMD was not required and decided to cancel the CMD scheduled for 2 December 2020. The tribunal then proceeded to make a decision on the application on the basis of the information before it.

### **Findings in Fact**

11. The tribunal made the following findings in fact;

- There was a short-assured tenancy in place between the parties. The tenancy began on 1 November 2017 and came to an end on 20 October 2020, when the respondent handed in the keys to the property.
- Under the tenancy agreement, the respondent was liable to pay rent of £674 per calendar month payable in advance on the tenth of each month.
- The tenancy deposit of £695 was released to the applicant by My Deposits Scotland in respect of damages and repair costs.
- As at 10 November 2020, the outstanding sum owed by the respondent to the applicant was £4293.01.

### **Reasons for Decision**

12. The tribunal agreed to the applicant's request of 10 November 2020 to amend the application in order to increase the sum claimed. The amendment request had been intimated to the tribunal and to the respondent at least 14 days prior to the scheduled CMD. It therefore met the requirements set out in rule 14A (1) of the 2017 rules. The updated rent statement showed that the arrears due had increased to £4293.01 as at 10 November 2020.
13. It was stated in the application to amend the sum claimed that the Department for Work and Pensions had advised the applicant that no further payments were due in respect of universal credit housing payments. It was also stated that on or around 2 November 2020, My Deposits Scotland released the tenancy deposit of £695 to the applicant in respect of damages and repairs costs,
14. There was agreement between the parties that the amended sum sought by the applicant was due by the respondent. The respondent had admitted the amended claim, and the tribunal therefore determined that an order for payment should be granted.
15. The tribunal then considered the applicant's request for the tribunal to award interest at 8% on the sum claimed from the date of the decision. The tenancy agreement between the parties stated at clause 19.2: *"All payments (including payments of rent in particular but without prejudice to the generality) due to the landlord under or by virtue of this agreement shall bear interest at the annual rate of eight percent from the respective dates on which they become due until*

*payment.*”

16. In terms of rule 41A of the 2017 rules, the tribunal may include interest when making an order for payment. Any such interest is to be at the rate either a) stated in the relevant tenancy agreement or b) ordered by the tribunal, and runs from the date of the tribunal’s decision. The tribunal therefore decided to grant interest from the date of decision at the contractual rate of interest of 5.75%, in terms of rule 41A (2) (a) of the 2017 rules.
17. The tribunal then considered whether to grant the order subject to a time to pay direction, as requested by the respondent. Section 1 of the Debtors (Scotland) Act 1987 states that the tribunal shall, if satisfied that it is reasonable in all the circumstances to do so, and having regard to the matters mentioned in subsection 1A, direct that the sum claimed shall be paid by instalments or as a lump sum.
18. The matters mentioned in subsection 1A are:
  - a) The nature of and reasons for the debt in relation to which the order 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.
19. The tribunal considered whether it was reasonable in all the circumstances to grant a time to pay direction. It noted that the applicant was willing to accept the respondent’s proposal.
20. The tribunal noted that it would take the respondent more than seven years to repay the outstanding debt at the proposed rate of £50 per month. In her time to pay application, the respondent stated that she was unemployed; that she was a single parent with two young children; and that her only income was state benefits totalling around £1050 per month. Her ability to pay the debt is therefore currently very limited, given her other monthly outgoings.
21. Having considered all of the evidence before it, the tribunal is satisfied that it is reasonable in all the circumstances to grant a time to pay direction as sought by the respondent.

## **Decision**

The tribunal grants an order for payment by the respondent to the applicant for the sum of £4293.01 with interest thereon at the rate of eight per cent (8%) per annum rate running from the date of the decision until payment.

The tribunal makes a time to pay direction under Section 1(1) of the Debtors (Scotland) Act 1987, requiring the respondent to pay the sum of £50 per month until the full amount has been paid.

### **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.**

**Sarah O'Neill**

2 December 2020

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**Legal Member/Chair**

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**Date**