



**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/21/2166**

**Re: Property at 17 Main Street, New Abbey, Dumfries, DG2 8BY (“the Property”)**

**Parties:**

**Mr David Kingan, Overton, New Abbey, Dumfries, DG2 8QD (“the Applicant”)**

**Ms Tracy McKie or Nugent, Mr John McKie, 17 Main Street, New Abbey, Dumfries, DG2 8BY (“the Respondents”)**

**Tribunal Members:**

**Petra Hennig-McFatridge (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of £24,835 should be granted in favour of the Applicant with interest at the rate of 5% per annum above the base lending rate fixed by the Clydesdale Bank p.l.c. from time to time running from the date of the decision of the First-tier Tribunal to grant this order, being 1 November 2021, until payment.**

**Procedural Background:**

This is an application for a payment order under Rule 70 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (the rules) dated 7 September 2021.

The Applicant submitted the following documents:

1. Tenancy agreement commencing on 27 June 2014 between the parties over the property
2. Rent statement up to 5 August 2021

On 30 September 2021 the Tribunal served on the Respondents by Sheriff Officers the notification of the Case Management Discussion on 1 November 2021 at 11:30.

On 19 October 2021 the Tribunal received from the Respondents two Time to Pay Direction Applications, acknowledging the amount outstanding and offering the sum of £200 per month as a payment rate for the debt.

On 22 October 2021 the Applicant's representatives sent to the Tribunal confirmation that the Applicant was not content for the Time to Pay Direction application to be granted.

The documents are referred to for their terms and held to be incorporated herein.

### **The Case Management Discussion:**

A Case Management Discussion was held on 1 November 2021. Mrs McKie, formerly Nugent, participated on behalf of the Respondent, Mr McCartney participated on behalf of the Applicant. The Legal Member summarised the purpose of the CMD under Rule 17 and advised that a decision can be made in terms of Rule 18 if all relevant facts are agreed at the CMD and it is not contrary to the interests of the parties to do so.

Mr McCartney stated that at the rate offered the debt would take over 10 years to clear and it was not reasonable for the Tribunal to make a Time to Pay Direction in those circumstances. The Respondents are still not paying rent. The amount outstanding as of 5 August 2021, which is the amount pursued in this application, remains outstanding. The Applicant is seeking the order for payment of said sum together with the interest as stated in Clause 3 (a) of the tenancy agreement.

The Respondent, formerly Ms Nugent, confirmed that she is now Mrs McKie and that she and her husband are the tenants of the property under the tenancy agreement lodged. Both had acknowledged the outstanding rent arrears as correct to 5 August 2021. She confirmed that her husband is seeking employment and she cannot work more hours as no further hours are available at her job. Once her husband finds employment the offer of £200 per month towards the rent arrears would be increased. She stated the Respondents are not able to offer more at present and are in significant financial difficulties, also having incurred other debts. Mrs McKie wished it noted that she requested that any communication from the Applicant should be by email.

### **Findings in Fact:**

The following facts were not disputed by the Respondents:

1. The parties entered into a Short Assured Tenancy Agreement for the property starting at 27 June 2014. The tenancy is ongoing.
2. In terms of the lease monthly rent is payable in advance at the rate of £320 per month.
3. As at 5 August 2021 rent arrears of £24,835 had accrued, which at the date of the CMD on 1 November 2021 are still outstanding.

4. In terms of Clause 3 (a) of the tenancy agreement an interest rate of 5% per annum above the base lending rate fixed by the Clydesdale Bank p.l.c. from time to time applies for unpaid rent.
5. The Respondents applied for a Time to Pay Direction with payments at the rate of £200 per month.
6. At this rate payment of the full sum will in excess of 10 years to be paid off.

**Reasons for the Decision:**

1. The Tribunal make the decision on the basis of the written evidence lodged by both parties and the evidence of the parties at the CMD. The facts in the case are not disputed. The rent outstanding as of 5 August 2021 based on the amounts shown in the rent statement and claimed in the application is £24,835 and this sum remains outstanding at the date of the CMD. There was no defence to the action. It is not in dispute that the sum of £24,835 rent arrears is due by the Respondents to the Applicant and that the interest rate as stated in the application applies.
2. The Respondent confirmed she is now Mrs McKie and the Tribunal accordingly adjusted the Respondent details as per her statement at the CMD.
3. The Respondents lodged a Time to Pay application, which was not accepted by the Applicant.
4. The Applicant is entitled to payment of the sum of £24,835 with interest.
5. The Tribunal grants the order as rent lawfully due to the Applicant by the Respondent had not been paid.
6. The Applicant's representative indicated that the arrears are increasing at present as no further rent had been paid.
7. The outstanding amount as stated in the application is just below the maximum amount of £25,000 for which a direction of that nature is even competent. The rule of thumb is, that a reasonable proposal would clear the debt in question within about 2 years. The Tribunal was satisfied that it was not reasonable in all the circumstances to grant the Time to Pay Direction application, having regard to the nature and reason of the debt, the action taken by the Applicant to assist the Respondent in paying the debt, the Respondent's financial position, the reasonableness of the Respondent's proposal and the Applicant's agreement to the proposal. It would take in excess of 10 years for the arrears to be cleared and according to the statement of Mrs McKie the Respondents have other outstanding debts they require to address. The legal member explained to the Respondent Mrs McKie that in this situation, although it may be accepted that the amount suggested is all the Respondents can afford, it would be unreasonable to

expect a creditor to wait over 10 years for arrears to be cleared. It is of course open to the parties to negotiate a payment plan at the enforcement stage of the order if such a plan can be agreed.

8. In terms of Rule 41A, interest payments stated in decisions of the Tribunal run from the date of the decision of the Tribunal.

## **Decision**

**The Tribunal grants an order for payment of £24,835 by the Respondents in favour of the Applicant with interest at the rate of 5% per annum above the base lending rate fixed by the Clydesdale Bank p.l.c. from time to time running from the date of the decision of the First-tier Tribunal to grant this order, being 1 November 2021, until payment.**

## **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.**



**Petra Hennig McFatridge**

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**Legal Member/Chair**

**1 November 2021**

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**Date**