



**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/22/0757

Re: Property at 69 McKinlay Crescent, Irvine, KA12 8DP (“the Property”)

Parties:

**Mr Andrew Russell, Allison Russell, 107 Explorers Court, 5 Newport Avenue,
London, E14 2EB; Flat 107 Explorers Court, 5 Newport Avenue, London, E14
2EB (“the Applicants”)**

**Mr Robert Smith Kelly, Michelle Aubert, 19 Campbell Place, Irvine, KA11 4HD
 (“the Respondents”)**

Tribunal Members:

Nicola Irvine (Legal Member)

Decision in the absence of the First Respondent

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) granted an Order for Payment against the Respondents in favour of
the Applicants in the sum of £5,593, subject to a time to pay direction, requiring
the Second Respondent to pay at the rate of £100 per fortnight.**

Background

1. The Applicants submitted an application under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The Applicants sought an order for payment in respect of rent arrears said to have been incurred by the Respondents.
2. By decision dated 25 May 2022, a Convenor of HPC having delegated power for the purpose, referred the application under Rule 9 of the Rules to a case management discussion.
3. The Notice of Acceptance was intimated to the Applicant’s representative on 30 May 2022. The Tribunal intimated the application to the parties by letter of

28 June 2022 and advised them of the date, time and conference call details of a case management discussion (“CMD”) on 8 August 2022. In that letter, the parties were also told that they required to take part in the discussion and were informed that the Tribunal could make a decision today on the application if the Tribunal has sufficient information and considers the procedure to have been fair. The Respondents were invited to make written representations by 19 July 2022.

4. On 27 July 2022, the Tribunal received an email from the Applicants’ representative, attaching an updated statement of account. The Tribunal intimated a copy of that email and statement of account to the Respondents on 4 August 2022.
5. On 4 August 2022, the Tribunal received a request by the Second Respondent to postpone the CMD to enable her to instruct a representative. The Tribunal granted the postponement request and assigned a further CMD for 6 October 2022.
6. On 4 October 2022, the Tribunal received an application for a time to pay order from the Second Respondent’s representative. The Second Respondent offered payment at the rate of £100 per fortnight, commencing 17 October 2022.

The case management discussion

7. The Applicants were represented by Mr Ruff and the Second Respondent by Mr Meek. The case management discussion took place by conference call and proceeded in the absence of the First Respondent. The Applicants’ representative advised that the Respondents no longer reside in the property and that the current level of rent arrears amounts to £5,593, as is reflected in the updated rent statement lodged on 27 July 2022. The Second Respondent’s representative confirmed that the Second Respondent accepted that the sum of £5,593 is due in respect of rent arrears. Following inquiry from the Tribunal, the Second Respondent’s representative invited the Tribunal to treat the application for a time to pay order as an application for a time to pay direction. The Tribunal noted that from the Applicants’ representative that the offer of instalments at the rate of £100 per fortnight is acceptable to the Applicants.

Findings in Fact

8. The parties entered into a short assured tenancy which commenced 23 September 2016.
9. The Respondents were obliged to pay rent at the rate of £400 per month.
10. The Respondents have incurred rent arrears amounting to £5,593.

Reason for Decision

11. The Tribunal proceeded on the basis of the documents lodged and the submissions made at the case management discussion. The updated statement of account was intimated to both Respondents on 4 August 2022. The Second Respondent accepted that the sum of £5,593 is due in respect of rent arrears. The Second Respondent offered payment by instalments of £100 per fortnight and that offer was acceptable to the Applicants. The Tribunal therefore allowed the Applicants to increase the sum sought to £5,593 and granted an order in that sum, subject to a time to pay direction in respect of the Second Respondent, requiring her to pay that sum by instalments of £100 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.

6 October 2022

Legal Member/Chair

Date