

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017**

**Chamber Ref: FTS/HPC/CV/18/1546**

**Re: Property at 11 Hugh Mackenzie Avenue, Alness, IV17 0WQ ("the Property")**

**Parties:**

**Albyn Housing Society Limited, 68 Maclellan Crescent, Inverness IV3 8DN ("the Applicant") represented by Highland Residential, also of 68 Maclellan Crescent, Inverness, IV3 8DN ("the Applicant's Representative")**

**Miss Irene Robertson, 11 Hugh Mackenzie Avenue, Alness, IV17 0WQ ("the Respondent") represented by Ms Allison MacRury**

**Tribunal Members:**

**Ewan Miller (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that a payment order in favour of the Applicant would be granted against the Respondent in the sum of £5160**

**Background/Preliminary Issues**

The Applicant had applied for a payment order against the Respondent in respect of arrears of rent. The Applicant let the Property to the Respondent.

A previous Case Management Discussion had taken place on 12<sup>th</sup> of September 2018 and had been continued. This was because the Tribunal had not been satisfied that the original "Form F" submitted with the application by the Applicant made it clear that a payment order was being sought.

A preliminary issue arose as the Respondent's representative highlighted that her understanding was that Highland Residential was not the actual owner of the Property but rather the owner was Albyn Housing Association Limited.

The Applicant's Representative indicated that Albyn had "signed" over various properties to Highland Residential. Upon questioning the Applicant's Representative further, it appeared to the Tribunal that title to the Property was still in the name of Albyn and that Highland Residential managed the Property on behalf of Albyn. Highland Residential was a subsidiary of Albyn. If title to the Property was in the name of Albyn then unless there was some formal nomination or beneficial ownership (which did not appear to be the case) then Albyn should be the applicant.

Under Clause 32 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended, the Tribunal may add a party to the proceedings. In the circumstances the Tribunal was satisfied it was appropriate to add Albyn as the Applicant and that Highland Residential became their Representative. The individuals from Highland Residential confirmed they had authority to act on behalf of Albyn at the Hearing.

A second issue arose in that the individuals present from Highland Residential were under the impression that the case management discussion would also address the question of eviction of the Respondent. The Tribunal clarified that this discussion was only in relation to the question of rent arrears due under the lease between the parties. An application to the Tribunal for possession had been submitted previously but had been rejected at an initial stage and had not reached either a hearing or case management discussion. The Applicant had now served further eviction papers on the Respondent and had thought that this would be conjoined with the hearing on the rent arrears. The Tribunal, having reviewed the paperwork, was satisfied that this was not the case. The possession action had been rejected and the Applicant needed to apply to the Tribunal of new before that matter would be heard. The note of the last case management discussion of 12<sup>th</sup> of September gave no indication that the eviction would be considered alongside the rent arrears. The note of the case management discussion simply stated that the Applicant was considering serving the eviction papers again.

### **The Case Management Discussion**

The discussion took place before the Tribunal on 29<sup>th</sup> October 2019 at the Jurys Inn Hotel, Inverness at 11.30. Present were Julie Lindsay, Louise Cook and Duncan Black from Highland Residential. The Respondent was present and was represented by Ms Allison MacRury.

Ms MacRury submitted that there was a payment plan in place between the parties. Her client had made a lump sum payment of £2000 in early September 2016 and was making ongoing payments of £600 a month (£500 for the ongoing monthly rental and £100 towards the arrears). She submitted that in light of this no eviction should take place as the Applicant was personally barred from seeking an eviction given an agreement had been reached between the parties.

The Applicant's Representative submitted that whilst there had been a discussion about a payment plan with the Respondent it had not been accepted. The Applicant had received advice that they could not enter in to a payment plan that lasted more than one year to deal with the arrears.

Ms MacRury submitted that her client was currently the subject of a Debt Arrangement Scheme and she had borrowed the £2000 from friends and family to allow her to keep the Property. She would never have paid the money to the Applicant if she had thought that there was not an agreement in place to tackle the arrears and that she might still face eviction. Ms Cook of Highland Residential, upon being questioned by the Tribunal, was of the view that she had not committed to the repayment plan proposed by the Respondent being acceptable. However, she conceded that the Respondent might have formed a reasonable belief that an agreement had been reached.

Neither party disputed the fact that at the date of the case management discussion the sum of £5160 was outstanding.

### **Findings in Fact**

The Tribunal found the following facts to be established:-

- The Applicant had let the Property to the Respondent under a lease
- The monthly rental was £500 per calendar month
- The Respondent, whilst she had been making some payments, was in arrears at the date of the case management discussion of £5160.

### **Reasons for the Decision**

The decision for the Tribunal was a relatively easy one. It was not disputed by the parties that there were arrears of rent of £5160. On that basis the Applicant was entitled to a payment order in that amount. The legislation did not make provision for the Tribunal to specify a time to pay arrangement or the like and so the Tribunal would simply make an order for the principal sum. It was open to the parties to allow payments in instalments if they so wished.

The Tribunal noted the submissions around whether or not a payment plan had been agreed between the parties. For the purpose of this case management discussion, this was not a relevant factor. The principal sum of £5160 was due and was accepted as such by the Respondent.

Had the case management discussion been around the ongoing eviction proceedings then the question of whether there was an agreed payment plan in place may have been of relevance. Ms MacRury's argument that the Applicant was personally barred from raising eviction proceeds where an agreed payment plan was in place and being adhered to was relevant in that context. If the Applicants pursued their eviction proceedings against the Respondent then Ms MacRury could raise this point at that stage. However, for the purposes of this case management discussion, the sum of £5160 was acknowledged as being due and it was appropriate for the order to be granted. In any event, given the Respondent was subject to a Debt Arrangement Scheme, the order was of little value to the Applicant. The principal dispute between the parties was in relation to the eviction but that was outwith the scope of the this case management discussion and was an argument for another day.

## **Decision**

The Tribunal found that the Respondent was due the sum of £5160 and granted a payment order for that sum in favour of the Applicant

## **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.

E Miller

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**Legal Member/Chair**

29/10/18  
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**Date**