



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 5(2) of the Debtors (Scotland) Act 1987

Chamber Ref: FTS/HPC/PY/21/1876

Parties:

Mr Gordon McInnes, 14 Nicholswell Place, Glassford, Strathaven, ML10 6YR ("the Applicant")

Miss Alix Reid, c/o Countrywide Lettings, 29 Cadzow Street, Hamilton, Lanarkshire, ML3 6EE ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") unanimously determined that a Time Pay Order be granted. The Applicant, who is the Debtor, is required to make payment of the previously ordered sum of One Thousand Nine Hundred and Ninety Five Pounds (£1,995) at a rate of £166.25 per month until the said debt is paid with the first payment being due no later than 7 days from the date of intimation of this decision.

Background

1. On 21 June 2021, the Tribunal granted an order for payment against the Applicant in favour of the Respondent of the sum of £1,995. This sum represented arrears of rent found to be due to the Respondent, who is the Applicant's former landlord relative to the period April to June 2020.
2. On 30 July 2021 a Charge for Payment was served by Sheriff Officers on the Applicant on the instructions of the Respondent.
3. On 5 August 2021, the Applicant submitted an application for a time to pay order in terms of Section 5 of the Debtors (Scotland) Act 1987 ("the Act") and Rule 41H of the Schedule to the First-tier Tribunal for Scotland Housing and Property

Chamber (Procedure) Regulations 2017 ("the Procedure Rules"). The Applicant offered to make payment at the rate of £40 per month.

4. On 11 October 2021, the Tribunal granted an order sisting further diligence until the application had been determined.
5. A copy of the application was served on the Respondent.
6. By email dated 28 September 2021, the Respondent notified the Tribunal that she did not consent to the application for time to pay application.
7. A Case Management Discussion (CMD) took place on 17 January 2022 at 10.00 am. This took place by teleconference. The Applicant and the Respondent were both present.

Findings and Reasons

8. The Applicant and Ms Stephanie Pollock were previously the tenants of the property at 2 Cot Castle Grove, Stonehouse, Lanarkshire, ML9 3RQ. The Respondent was the landlord. The Respondent, initiated proceedings before the First-tier Tribunal under Chamber reference FTS/HPC/CV/20/2652, being an action for civil proceedings in which she sought to recover arrears of rent. Following an evidential hearing in that case heard by the Tribunal on 21 June 2021, the Applicant and Ms Pollock were found liable for the total sum of £1,995.
9. A Charge was served upon the Applicant on 30 July 2021. He has made an application for a Time to Pay Order to the Tribunal. In the written Time to Pay application, the Applicant offers to pay at £40 per month.
10. The Applicant stated that:-
 - a. He is in full-time employment working for BT Business. He receives wages and also bonuses/commission payments based on the number of sales achieved in the previous month. The maximum commission payable is £1000 per month. Allowing for the Applicant receiving the maximum commission his total income is £3,437.50 per month. The Applicant does not always achieve the maximum commission each month.
 - b. The outgoings narrated on the application form are paid monthly.
 - c. With regard to the credit card and loan payments of £1,638 per month these include car loan repayments and costs associated with buying items for his home such as a sofa and TVs. He said the cost of clothing and also food was sometimes charged to his credit cards in addition to the stated monthly food outgoing of £400 per month. He has 2 credit cards. The Applicant could not provide a more detailed breakdown of the total amount.
 - d. The maintenance costs of £325 per month are for his 2 sons from a previous relationship. They are 11 and 16 years of age.
 - e. The insurance costs of £199 per month comprise £112 for a multi-car policy for the Applicant and his partner, two life insurance policies costing £22 and £56 each month respectively, and £12 per month for home insurance.

- f. He requires to travel as far as Oban and the isle of Arran for his work. He does not recover travel costs unless over a certain amount and these are tied into the commission payments he receives.
 - g. He lives with his partner and their 3 year old daughter.
 - h. His partner previously signed a Trust Deed. She is working full-time. She pays the nursery fees for their daughter and contributes to her Trust Deed each month. The Applicant pays the household bills alone.
 - i. He had not made any payments towards the debt in the intervening period. He said he quickly made the Time to Pay application after the Charge for Payment had been served. It didn't occur to him to make any payments meantime.
 - j. Once finance agreements fall away he will pay more.
11. The Applicant stated that it would take too long for the debt to be cleared at £40 per month.
12. The Tribunal finds that the Applicant's offer to pay at £40 per month is not reasonable. Repayment of the total sum due at £1,995 per month will take around 4 years and 2 months. That is too long given the debt was incurred in March to June 2020. The Applicant is in full-time employment as is his partner. The Applicant has prioritised payment of other debts over the debt due to the Respondent. Given the Respondent's financial position it is reasonable that the debt due to the Respondent be paid within 12 months which equates to £166.25 per month. The first instalment is due to be paid after intimation of the order to the Applicant.
13. The Respondent should intimate to the Applicant the method by which payment is to be made to her to facilitate payments by 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.

Gillian Buchanan

Legal Member/Chair

17 January 2022
Date