

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

Chamber Ref: FTS/HPC/PY/21/2492

Parties:

Jacqueline Baxter and William Dickie, 45 Forfar Road, Greenock, PA16 0YL (“the Applicants”)

**Jacobs & Neale LLP, 42 Lytton Road, Barnet, EN5 5BY; 12B Theed Street,
South Bank, London, SE1 8ST (“the Respondent”)**

Tribunal Members:

Richard Mill (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) refused the application for a time to pay order and dismissed the application

Introduction

This is an application under Section 5 of the Debtors (Scotland) Act 1987. This statutory provision allows an application to be made by a debtor to the First-tier Tribunal for a Time to Pay Order where a debt is due under an Order and a Charge for Payment has been served. The application is made with reference to Rule 41H.

By way of Order of the Tribunal made on 8 June 2021, the applicant and her partner were found jointly liable in the sum of £3,200. The sum represented arrears of rent found to be due to the respondent.

On 8 October 2021, Sheriff Officers served a Charge upon the applicants. Following service of the Charge, Ms Baxter lodged an application for a Time to Pay Order with the Tribunal on 12 October 2021.

On 22 October 2021 an in-house convener considered the application for a Time to Pay Order and found that it was competent. The Tribunal ordered that any diligence be sisted until further notice.

A Case Management Discussion (CMD) took place by teleconference on 25 January 2022 at 11.30 am. The applicant was represented by Miss Luisa Fidelo of Brown & Co Legal LLP. The respondent was represented by Mr Bruce Neal of the respondent's organisation and Mr Campbell Gisbey of Homefinders Inverclyde Limited.

Findings and Reasons

The applicant in the written documents is Ms Jacqueline Baxter. Miss Fidelo clarified at the commencement of the hearing that the application to the Tribunal was being made on behalf of both Ms Baxter and Mr William Dickie, her partner. They are the joint tenants of the property at 45 Forfar Road, Greenock PA16 0YL. They entered into a private residential tenancy agreement with Messrs Jacobs & Neal LLP who was the owner of the property until it was transferred to a company in December 2021 (the Directors of the company are the same as the members of the LLP). The tenancy commenced on 4 March 2020 and continues.

The respondent landlord previously initiated proceedings before the First-tier Tribunal under Chamber reference FTS/HPC/CV/21/0869, being an application for civil proceedings in which recovery of rent arrears was sought. Following a hearing on 8 June 2021 the applicant and her co-tenant partner Mr William Dickie were found liable to pay to the respondent the sum of £3,200. They have joint and several liability. A Charge was served upon the applicants on 8 October 2021 by Sheriff Officers.

In the current application Ms Baxter and Mr Dickie offer to pay the £3,200 at the rate of £50 per month.

The Tribunal noted the respondent's objection made in writing to the application to seek a Time to Pay Order.

The Tribunal noted the lengthy submissions made on behalf of the applicants and had regard to the entirety of the written documentation lodged on behalf of the applicants which was available including the Inventory of Productions indexed 1 – 8 lodged on the morning of the hearing.

Ms Baxter was formerly in two part time employments but lost these due to the Covid pandemic. She is now unemployed and in receipt of benefits including Universal Credit and Personal Independent Payment. She suffers from anxiety and depression. Mr Dickie remains employed as a hydraulic fitter. They have 4 children who are 17, 14, 10 and 7 years of age. They obtained support from 'Financial Fitness' money advice service. A financial statement for Ms Baxter and Mr Dickie is produced which records that their income from all sources, including state benefits, totals around £3,333.73 per month. Their outgoings are substantial and exhaust nearly the entirety of their

income other than a residual balance of £62.81. Their outgoings include payments for Council Tax arrears and former mortgage debt.

The Tribunal noted that eviction proceedings have been commenced and there is a CMD in those proceedings on 26 January 2022.

The Tribunal had regard to all the matters stipulated in section 5(2A) of the 1987 Act including the nature and reasons for the debt in relation to which the Order is sought, the action taken by the creditor to assist the applicant, the applicants financial position, the reasonableness of any proposal by the applicants to pay that debt and the reasonableness of the objection by the respondent to the offer made.

The respondent objects to the offer.

The Tribunal finds that the applicant's offer to pay at £50 per month is not reasonable. This would take some 64 months to clear the principal debt which is well over 5 years.

Previous undertakings made by the applicants have not been fulfilled. Arrears of rent started to accrue prior to the covid-19 pandemic. Following the making of the payment order in June 2021 in the sum of £3,200, rent arrears have continued and stand today at £4,052.55. The applicants have chosen not to apply for funds from the tenant hardship loan fund or the tenant grant fund.

The Tribunal understands and appreciates the applicants precarious financial position, but the offer to pay the principal sum by the instalment rate proposed is prejudicial to the respondent given the length of time which it would take to repay. The previously granted open decree is fair and proportionate.

The application seeking a time to pay order was refused and dismissed.

It was noted that the applicants financial circumstances may improve. The Tribunal could not take account of such hypothetical future circumstances. No doubt if the applicants do increase their offer to pay then the respondent will reasonably consider such proposal when made.

The previous interim order granted under section 6(3) of the 1987 Act, which sists diligence on an interim basis, is now recalled.

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.

Richard Mill

25 January 2022

Legal Member/Chair

Date