



**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/22/3537

Parties:

Danut Gabriel Tataru, 69A Clermiston Road, Edinburgh, EH12 6XA (“the Applicant”)

**Mrs Tamil Natarajan, 1 Corstorphine Hill Crescent, Corstorphine, EH12 6LH
 (“the Respondent”)**

Tribunal Members:

Neil Kinnear (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

This was an application dated 13th December 2022 and brought in terms of Rule 41H (Applications for time to pay orders) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant sought a time to pay order in respect of an order of the Tribunal dated 2nd September 2022 for payment by the Applicant to the Respondent of the sum of £8,955.00 in respect of application FTS/HPC/CV/22/2593.

The Respondent served a charge for payment dated 11th October 2022, and the Tribunal issued an interim order to sist diligence/enforcement dated 21st December 2022 in response to this application and pending its determination.

Both parties provided the Tribunal with their written representations in advance of the Case Management Discussion.

The Case Management Discussion

A Case Management Discussion was held at 10.00 on 29th March 2023 by Tele-Conference. The Applicant did not participate, and was not represented. The Respondent participated, and represented by Mr Miller and Mr Logan, letting agents.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

Mr Miller explained that the Applicant opposed the granting of the order sought. The main reason for that opposition was that if an order was granted for payment in instalments at the rate of £50.00 per month, then it would take approximately 15 years to satisfy the order. That was an unreasonable period of time, and for that reason the order should be refused.

Mr Miller also explained that the Applicant had sub-let the Property and derived income therefrom, whilst not paying rent in terms of his tenancy agreement with the Respondent.

Statement of Reasons

The parts of section 5 of the *Debtors (Scotland) Act 1987* as amended relevant to this application are as follows:

“(1) Subject to section 14 of this Act, this section applies to a debt due under a decree or other document in respect of which—

- (a) a charge for payment has been served on the debtor;
- (b) an arrestment has been executed; or
- (c) an action of adjudication for debt has been commenced.

(2) Subject to subsections (4) and (5) below, the First-tier Tribunal, on an application by the debtor, shall, if satisfied that it is reasonable in all the circumstances to do so, and having regard in particular to the matters mentioned in subsection (2A) below, make an order that a debt to which this section applies (including any interest claimed in pursuance of subsections (6) and (7) below) so far as outstanding, shall be paid—

(a) by such instalments, commencing at such time after the date of intimation in accordance with section 7(4) of this Act to the debtor of the order under this subsection, payable at such intervals; or

(b) as a lump sum at the end of such period following intimation as mentioned in paragraph (a) above,

as the First-tier Tribunal may specify in the order.

(2A) The matters referred to in subsection (2) above are—

- (a) the nature of and reasons for the debt in relation to which the order is sought;
- (b) any action taken by the creditor to assist the debtor in paying that debt;
- (c) the debtor's financial position;
- (d) the reasonableness of any proposal by the debtor to pay that debt; and

(e) the reasonableness of the objection by the creditor to the offer by the debtor to pay that debt

(3) An order under subsection (2) above shall be known as a “time to pay order”.

The Tribunal accordingly must be satisfied that it is reasonable in all the circumstances to make a time to pay order having regard to the matters set out in section 5(2A).

The Tribunal was not so satisfied for the following reason.

The Applicant failed to participate at the Case Management Discussion, and as a result the Tribunal refused the application for want of insistence.

In any event, the Applicant has incurred substantial rent arrears due to the Respondent in relation to the order of the Tribunal to which this application relates. In this application, the Tribunal’s role is restricted to considering the time to pay application by applying the legal considerations set out in section 5 of the *Debtors (Scotland) Act 1987* as amended.

The Tribunal was not satisfied that it was reasonable in all the circumstances to make a time to pay order where the instalments offered by the Applicant would result in the Tribunal’s order for payment not being satisfied in full for approximately 15 years. The objection by the Respondent upon that basis was in the Tribunal’s view entirely reasonable.

Decision

In these circumstances, the Tribunal refused the application for a time to pay order.

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.

N. Kinnear

29/03/2023

Legal Member/Chair

Date