



**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/20/0584**

**Re: Property at Firbrae, Mellerstain, Gordon, TD3 6LG (“the Property”)**

**Parties:**

**Mellerstain Trust, C/O Galbraith, 59 George Street, Edinburgh, EH2 2JG (“the Applicant”)**

**Mr James Brand, Mrs Lynn Brand, Old Eckford Kirk, Eckford, Kelso, TD5 8LE;  
Old Eckford Kirk, Eckford, Kelso, TD5 8LE (“the Respondents”)**

**Tribunal Members:**

**Joel Conn (Legal Member)**

**Background**

1. This is an application by the Applicant for civil proceedings in relation to an assured tenancy in terms of rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”), namely an order for payment of rent arrears. The tenancy in question was a Short Assured Tenancy of the Property by the Applicant to the Respondents dated 16 and 20 March 2017.
2. The application was dated 17 February 2020 and lodged with the Tribunal shortly thereafter. The application was accompanied with a rent statement showing purported arrears as at the date of the application of £4,814.65, being unpaid rent due on 1 June to 1 November 2018, along with contractual interest to the date of the application of £353.72. The order sought in the application was for the combined sum of £5,167.37 with further interest.
3. The application had previously called for a CMD on 17 July 2020 at which the sum sought in the application had been accepted by the Respondents but they submitted a Time to Pay application seeking such a direction at £50 per calendar month. During the course of that CMD, the offer was increased to £100 per month and the application was continued for the Applicant’s then agent to take instructions. Further, a Notice of Directions was issued requesting

further financial information from the Respondents, following the terms of the Applicant's written objection to the Time to Pay application and the discussions at that CMD.

4. Prior to the calling of the continued CMD further financial information was provided by the Respondents and the Applicant's agent confirmed that the Time to Pay offer of £100/month was rejected.

### **The Hearing**

5. On 8 September 2020, at a case management discussion ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote conference call, I was addressed by Georgina Weston, a trainee Rural Surveyor with Galbraiths on behalf of the Applicant, and the first Respondent who represented both Respondents.
6. I clarified with both parties that it was agreed that the matter for discussion was solely whether the Time to Pay Direction be granted, which was agreed. I then proceeded to have the First Respondent clarify and expand a number of the financial points in question. In the course of such discussions, the First Respondent indicated that the Respondents wished to repay the sum earlier if they could but at present they could commit only to £100/month. Unsolicited, the First Respondent suggested that they might pay £100/month for three months and thereafter have the arrangement reviewed between the parties to see if the Respondents' financial position had improved and whether payments could be increased.
7. This led to a discussion with the Applicant's agent which resulted in an acceptance of a Time to Pay offer of £100/month provided that the Respondents undertook that, after three months, they review their financial position with the Applicant and, if there had been an improvement, look to agree additional voluntary payments over and above the £100/month under the Time to Pay Direction.
8. Having explained to both parties the implications of a Time to Pay Direction being granted, of payments not being made in accordance with it, and the limited ability of both sides to seek review of a Time to Pay Direction once it was made, it was clear that there was agreement between the parties. The Respondents were happy to give the undertaking to review possible additional voluntary payments after three months and the Applicant was thus willing to consent to the Time to Pay Direction at the rate of £100 per calendar month. I was happy to proceed on the basis of this unusual agreement.

### **Findings in Fact**

9. On 16 and 20 March 2017, the Applicant let the Property to the Respondents by lease with a start date of 1 April 2017 for a period until 1 April 2020 ("the Tenancy").

10. Under the Tenancy, the Respondents were to make payment of £925 per month in rent to the Applicant on the 1<sup>st</sup> of each month.
11. The rent due under the Tenancy was subsequently increased to £962.93 per month.
12. The Respondents vacated the Tenancy prior to the conclusion of the period agreed in the Tenancy agreement.
13. Clause 2.5.6 of the Tenancy agreement permitted the Applicant to seek “interest at the rate of 5% over the base rate of the Bank of Scotland on any sums due by the Tenant under this Lease which remain unpaid 14 days after the due date for payment”.
14. As of 17 February 2020, there was unpaid rent of £4,814.65 due by the Respondents to the Applicant in terms of the Tenancy in respect of unpaid rent due on the five rental payment dates from 1 June 2018 to 1 November 2018.
15. As of 17 February 2020, contractual interest on the said unpaid rent amounted to £353.72.
16. On 17 February 2020, the Applicant raised proceedings for an order for outstanding rent and interest due of £5,167.37 along with further interest.
17. As at 8 September 2020, no payment had been made against the outstanding rent or interest sums due by the Respondents.

### **Reasons for Decision**

18. The application was in terms of rule 70, being an order for civil proceedings in relation to assured tenancies. I was satisfied, on the basis of the application and supporting papers, and the concessions by the Respondents, that rent arrears of £4,814.65 were still outstanding and contractual interest was due upon that sum (of £353.72 up to the date of the application, with interest at 5% above Bank of Scotland base rate thereafter). I was satisfied that the necessary level of evidence for such civil proceedings in the combined sum of £5,167.37 had been provided, at least in consideration of the parties’ concessions.
19. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal and I was satisfied to make a decision at the CMD to award the sum of £5,167.37 against the Respondents.
20. In consideration of the parties’ discussions and agreement, I was further satisfied to make a Time to Pay Direction in terms of section 1(1) of the Debtors (Scotland) Act 1987 for this amount to be payable by instalments of £100 per month commencing within 14 days of intimation of the Order accompanying this Decision.

## **Decision**

21. In all the circumstances, I was satisfied to make the decision to grant an order against the Respondents for payment of the sum of (1) £4,814.65 with Interest thereon at the rate of 5% per annum above the base rate of Bank of Scotland from time to time, running from 18 February 2020, until payment; and (2) £352.72 (with no further interest applicable) to the Applicant, all with a Time to Pay Direction in terms of section 1(1) of the Debtors (Scotland) Act 1987 for this amount to be payable by instalments of £100 per month.

## **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.**

# J Conn

8 September 2020

Legal Member/Chair

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Date