



**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/20/0103

**Re: Property at 7 Thornroan Cottages, Tarves, Ellon, Aberdeenshire, AB41 7LD
("the Property")**

Parties:

**The Marquis of Aberdeen, The Estate Office, Mains of Haddo, Tarves, Ellon,
AB41 7LD ("the Applicant")**

**Miss Kirsty Elizabeth MacDougall, Ms Petronella Rosemary MacDougall, 42
Pringle Avenue, Tarves, Ellon, AB41 7NZ; 7 Wardford Cottages, Methlick, Ellon
("the Respondent")**

Tribunal Members:

Petra Hennig-McFtridge (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that an order for payment should be granted in favour of
the Applicant. A time to pay direction was made allowing the Respondents to
make payment of the principal sum of £2,885.90 by instalments in the sum of
£130 per month.**

Procedural Background:

[1] The Applicant is seeking an order for payment of rent for the property. An application in terms of Rule 70 of the Rules of Procedure was lodged on 13 January 2020 and the sum outstanding stated as £2,885.90.

[2] The Applicant lodged the tenancy agreement and rent account with a full explanation as to the background of the case. These documents are referred to for their terms and held to be incorporated here in.

[3] A Case Management Discussion (CMD) had been scheduled for 27 February 2020 at 14:00 in Aberdeen. This had been intimated to the parties and service on both Respondents was carried out by Sheriff Officers on 27 January 2020. All parties had been advised that a decision can be made at a CMD.

[4] The first named Respondent had lodged an application for a Time to Pay Direction by email to the Tribunal on 27 February 2020 acknowledging the debt and offering payments of £100 per fortnight. There had been no representations from the second named Respondent.

The Case Management Discussion:

[5] The Respondents did not attend. The first named Respondent had indicated she was at work in her email of 27 February 2020. There had been no representations made by the second named Respondent to the Tribunal. The Applicant was represented by Mr Mark Andrew.

[6] Mr Andrew advised that the second named Respondent has offered to make ongoing payments of £30 per month and that the first named Respondent had emailed the application for a Time to Pay Direction to the Applicant earlier in the day. He explained, as previously set out in the application, that the sum sought are the residue of rent arrears built up during the tenancy. After the tenancy had ended the parties had agreed a payment plan. Some of the funds had been repaid and then payments had stopped. The Applicant is willing to agree to payment by instalments. However, the offer of £100 per fortnight appeared to the Applicant to be setting the Respondents up to fail. The Applicant would prefer to have a more realistic arrangement in place and would agree to £130 per month.

[7] Findings in Fact:

- 1. The Applicants and the Respondents entered into an assured tenancy agreement commencing on 1 April 2015.**
- 2. The rent payable was £700 per month payable in advance**
- 3. The tenancy ended on 23 April 2018**
- 4. As per the calculation in the rent statement the arrears of rent as the end of the tenancy were £4,631.70**
- 5. Since then the arrears had been reduced to £2,885.90 after a payment plan had been agreed when the Applicant had initially raised an application for payment with the tribunal under reference FTS/HPC/CV/18/3128, which had been withdrawn in light of the payment plan agreed by both parties.**
- 6. Payments had stopped.**
- 7. The first named Respondent had acknowledged the amount outstanding as due and lodged a Time to Pay Direction application offering to pay the outstanding amount at the rate of £100 per fortnight.**
- 8. Her income is not completely clear as she is on a 0 hours contract and she states her income and outgoings as even on the application.**
- 9. The second named respondent has acknowledged the sum outstanding.**
- 10. A lower rate of payment was suggested by the Applicant through his representative on 27 February 2020**

11. At the rate of payment at £130 per month payment of the full sum of £2,885.90 will take less than 2 years.

[8] Reasons for the Decision:

The Tribunal has jurisdiction in terms of S16 of the Housing (Scotland) Act 2014.

The Tribunal considered that the facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

(d) discussing what witnesses, documents and other evidence will be required;

(e) discussing whether or not a hearing is required; and

(f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

However, in terms of Rule 18 of the Rules of Procedure:

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law, a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

The documents lodged are referred to for their terms and held to be incorporated herein.

[9] The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case.

[10] The Tribunal make the decision on the basis of the written evidence lodged by both parties in form of the original application, copy tenancy agreement Rent Account Statement dated 1 April 2018 and the further calculations shown in the application.

[11] The rent amount outstanding as of the date of the CMD is £2,885.90. This was explicitly acknowledged by the first named Respondent in her email of 27 February 2020. There was no defence to the action. It is not in dispute that the amount is due by the Respondents to the Applicant. The first named Respondent lodged a time to pay application on the day of the CMD which, subject to a more realistic payment schedule was agreed by the Applicant. The second named Respondent has not lodged any representations denying liability for the amount outstanding and although the time to pay direction was not lodged by her, she is not prejudiced by the time to pay direction as without the time to pay direction the Tribunal would have been entitled to make a payment order for the full amount at the CMD. The Applicant is entitled to payment of the sum of £2,885.90

[12] The Tribunal was satisfied that it was reasonable in all the circumstances to grant a time to pay direction, having regard to the nature and reason of the debt, the action taken by the Applicant to assist the Respondent in paying the debt, the Respondents' financial position, the reasonableness of the Respondents' proposal and the Applicant's proposal.

[13] From the information on the application for time to pay direction the Tribunal is satisfied that the payment rate would be cleared within less than 2 years. Having regard to the financial information stated in the Time to Pay application it is clear that in the current circumstances the first named Respondent would not be able to afford the payment rate of £100 per fortnight. Her income varies and she appears to have overstated the amount due on the debt to "Haddo", which is the amount due in rent arrears. However, even accepting that her payments may vary upwards because she has new employment, the Applicant considered that a payment rate of £100 per fortnight would be setting the Respondents up to fail. The Tribunal agrees with that assessment and considers that a realistic payment rate would be £130 per month to be shared between the Respondents.

[14] Given the period for appeal, the Tribunal orders the first payment to be made by 2 April 2020. It should be pointed out to the Respondents that if they wish to make higher payments the order would not stop them to do so.

[15] Decision

The Tribunal grants an order against the Respondents for payment of the sum of £2,885.90 to the Applicant. The Tribunal also makes a time to pay direction allowing payment to be made by instalments of £130 per month.

[16] 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.

Petra Hennig-McFatrige

Legal Member/Chair

27.2.2020

Date