



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/22/2467

Re: Property at 32 Mill Road, Linlithgow, EH49 7QW (“the Property”)

Parties:

Mr Ken Ritchie, 132 The Henge, Glenrothes, Fife, KY7 6XX (“the Applicant”)

Ms Vicky Sutherland, 32 Mill Road, Linlithgow, EH49 7QW (“the Respondent”)

Tribunal Members:

Andrew Upton (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent is liable to make payment to the Applicant in the sum of THREE THOUSAND EIGHT HUNDRED AND FIFTY POUNDS AND FIFTY PENCE (£3,850.50) STERLING; and makes a time to pay direction under Section 1(1) of the Debtors (Scotland) Act 1987 requiring the Respondent to pay the sum of £200 per month until the full amount has been paid, with the first payment being made within seven days after intimation of the Order.

STATEMENT OF REASONS

1. This Application called for its Case Management Discussions by teleconference on 19 December 2022. The Applicant was represented on the call by Mrs Johnstone of Northwood Central Lowlands Ltd. The Respondent was present on the call.
2. This is an Application seeking payment of sums said to be due by the Respondent as rent arrears. At the outset, Mrs Johnstone moved the Tribunal to increase the sum sued for from £3,325.50 to £3,850.50. That was not

opposed by the Respondent and the Tribunal increased the sum sued for accordingly.

3. In advance of the CMD, the Respondent had lodged an application under section 1(1) of the Debtors (Scotland) Act 1987 seeking a time to pay direction. In terms thereof, the Respondent offered to pay £100 per month. However, the Respondent advised the Tribunal that, in light of the increased sum sued for and having regards to her own circumstances, she would likely be in a position to pay £200 per month.
4. The time to pay application was opposed. In respect of the application itself, Mrs Johnstone indicated that a direction to pay £100 per month would take over three years to pay the debt. Even the increased proposal of £200 per month would take over a year to pay the debt. Mrs Johnstone advised that the landlord had tried to work with the Respondent to get on top of the arrears, but that had not yielded results. Mrs Johnstone highlighted that the Respondent had previously indicated that she had funds sitting to clear the debt. Mrs Johnstone suggested that the Respondent had been untruthful in her previous dealings with contractors. She said that the Respondent had been asked to provide evidence of her circumstances but none had been forthcoming.
5. The Respondent advised that she did not have sufficient funds sitting to clear the debt in this case. She indicated that she had started a relationship earlier this year, and that her boyfriend would likely assist her in repaying the arrears faster if he could be added to the tenancy agreement. The Tribunal confirmed that was a matter for the Applicant and Respondent to discuss separately. The Respondent confirmed that she had also recently discovered that she was pregnant.
6. In terms of section 1 of the Debtors (Scotland) Act 1987:-

“1.— Time to pay directions.

- (1) Subject to subsections (3) to (5) below and to section 14 of this Act, on an application by the debtor, the court or the First-tier Tribunal, on granting decree for payment of any principal sum of money, 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 (1A) below, direct that any sum decerned for in the decree (including any interest claimed in pursuance of subsections (6) and (7) below) or any expenses in relation to which the decree contains a finding as to liability or both such sum and such expenses shall be paid—
 - (a) by such instalments, commencing at such time after the date of intimation by the creditor to the debtor of an extract of the decree containing the direction, 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 court or the First-tier Tribunal may specify in the direction.

(1A) The matters referred to in subsection (1) above are—

- (a) the nature of and reasons for the debt in relation to which decree is granted;
- (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 any refusal by the creditor of, or any objection by the creditor to, any proposal by the debtor to pay that debt.

(2) A direction under subsection (1) above shall be known as a “time to pay direction”.

(3) Where a court or the First-tier Tribunal grants a decree which contains a finding as to liability for expenses but does not at the same time make a time to pay direction, then (whether or not the decree also decerns for payment of the expenses), it shall not at any time thereafter be competent for the court [or the First-tier Tribunal]² to make a time to pay direction in relation to those expenses.

(4) Where a court or the First-tier Tribunal grants a decree which contains a finding as to liability for expenses and makes a time to pay direction in relation to those expenses but—

- (a) does not decern for payment of the expenses; or
- (b) decerns for payment of the expenses as taxed by the auditor of court or auditor of the Court of Session but does not specify the amount of those expenses,

in relation to so much of the time to pay direction as relates to the expenses, the reference in subsection (1) above to the date of intimation of an extract of the decree containing the direction shall be treated as a reference to the date of intimation of an extract of a decree decerning for payment of the expenses, being an extract specifying their amount.

- (5) It shall not be competent for the court or the First-tier Tribunal to make a time to pay direction—
- (a) where the sum of money (exclusive of any interest and expenses) decerned for exceeds £25,000 or such amount as may be prescribed in regulations made by the Lord Advocate;
 - (b) where the decree contains an award of a capital sum on divorce or on the granting of a declarator of nullity of marriage;
 - (c) in connection with a maintenance order;
 - (cc) in connection with a liability order within the meaning of the Child Support Act 1991.;
 - (d) in an action by or on behalf of the Commissioners for Her Majesty's Revenue and Customs for payment of any sum recoverable under or by virtue of any enactment or under a contract settlement;
 - (da) in an action by or on behalf of Revenue Scotland for payment of any sum recoverable under or by virtue of the Revenue Scotland and Tax Powers Act 2014 (asp 16) or any other enactment in respect of a devolved tax, under a contract settlement or under a settlement agreement,
- [...]
- (f) in an action for payment of—
- [...]
 - (ii) car tax due under the Car Tax Act 1983.
- (6) Without prejudice to section 2(5) of this Act, interest payable under a decree containing a time to pay direction (other than interest awarded as a specific sum in the decree) shall not be recoverable by the creditor except in accordance with subsection (7) below.
- (7) A creditor who wishes to recover interest to which subsection (6) above applies shall serve a notice on the debtor, not later than the date prescribed by Act of Sederunt or the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 occurring—
- (a) in the case of a direction under subsection (1)(a) above, before the date when the last instalment of the debt concerned (other than such interest) is payable under the direction;

(b) in the case of a direction under subsection (1)(b) above, before the end of the period specified in the direction,

stating that he is claiming such interest and specifying the amount of the interest claimed.

(8) Any sum paid by a debtor under a time to pay direction shall not be ascribed to interest claimed in pursuance of subsections (6) and (7) above until the debt concerned (other than such interest) has been discharged.

(8A) In paragraph (d) of subsection (5) above, “*contract settlement*” means an agreement made in connection with any person's liability to make a payment to the Commissioners for Her Majesty's Revenue and Customs under or by virtue of any enactment.

(8B) In paragraph (da) of subsection (5)—

“*contract settlement*” means any agreement made in connection with any person's liability to make a payment to Revenue Scotland under or by virtue of the Revenue Scotland and Tax Powers Act 2014 (asp 16) or any other enactment in respect of a devolved tax,

“*devolved tax*” has the meaning given by section 80A(4) of the Scotland Act 2012 (c. 46),

“*settlement agreement*” has the meaning given by section 246(1) of the Revenue Scotland and Tax Powers Act 2014 (asp 16).”

7. When considering whether to grant a time to pay direction, the Tribunal requires to have regard to all of the circumstances, and to the factors set out in section 1(1A) of the 1987 Act in particular. Having regard to the circumstances set out by the Respondent in her application for time to pay, the written response thereto by the Applicant's representative dated 16 December 2022, and the further submissions made during the CMD as outlined above, the Tribunal determined that it is reasonable to make a time to pay direction in this case. In particular, the Tribunal determined that the Respondent should pay the sum of £3,850.50 in monthly instalments of £200. The first instalment should be paid within seven days of the date of intimation of the order. This would see the sum sued for paid within twenty months.

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.

Andrew Upton

Legal Member/Chair

19 December 2022

Date