



**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) 2016 Act**

**Reference number: FTS/HPC/CV/19/1062**

**Re: Property at 51d Braeface Rd, Cumbernauld, G67 1HQ (“the Property”)**

**The Parties:**

**Mrs Aileen Shirra, Mr Alexander Shirra, 11 Scott Crescent, Cumbernauld, G67 4LF (“the Applicants”)**

**Ms Kylie McMahon, 51d Braeface Rd, Cumbernauld, G67 1HQ (“the Respondent”)**

**Tribunal Members:**

**Joel Conn (Legal Member)**

**Decision (in absence of the Respondents)**

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

1. This is an application by the Applicants for civil proceedings in relation to a private residential tenancy in terms of rule 111 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 Private Residential Tenancy Agreement of the Property by the Applicants to the Respondent with a start date on 17 December 2018.
2. The application was dated 4 April 2019 and lodged with the Tribunal that day. The order sought in the application was for £1,650 of rent arrears being three months of unpaid rent of £550 per month falling due from the payment dates in January to March 2019.

**The Hearing and subsequent consideration**

3. On 3 July 2019, at a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting at the Glasgow

Tribunals Centre I was addressed by the Applicants' agent, John Rafferty of Kelvin Valley Properties.

4. There was no appearance for the Respondent but she had sent in a number of emails that day stating that she could not attend due to a medical appointment. (No letter from a doctor was provided.) The emails gave comments on the lease and the arrears.
5. The Applicants' agent confirmed that the application was still insisted upon. A revised rent statement was provided. Due to an amount of backdated Housing Benefit being received, the arrears at 3 July 2019 were now said to be £1,148.98 but that arrears were now climbing again as the Housing Benefit payment was only £396.24 every four weeks (against the rental obligation of £550 a month).
6. The application did not seek any contractual rate of interest. The Applicants' agent confirmed no order in respect of expenses was sought.
7. On the basis of the Respondent's position, as disclosed in her emails, I issued a Direction seeking further information from the Respondent by 16 July 2019. The CMD was continued to 16 August 2019 but within the Note of Discussion from the CMD I made clear that I would consider issuing a Decision and Order earlier, and discharge the continued CMD, if the information sought in the Direction was not provided on time.
8. The Direction, with a Note of Discussion from the CMD, was sent to the Respondent by Recorded Delivery post in the days following the CMD of 3 July 2019. (The Respondent was sent an email by the Tribunal Clerk on 4 July 2019 to advise that the papers regarding the outcome of the CMD would be sent by Recorded Delivery.) The Respondent did not, however, sign for the letter or seek it from her delivery office. She did, however, sign on 12 July 2019 for a subsequent letter from the Tribunal notifying her of the date and time of the continued CMD. On 19 July 2019, having been informed that the deadline in the Direction had passed without any further information from the Respondent, but that the Direction and Note of Discussion had not been signed for, I instructed the Tribunal Clerk to reissue the Direction and Note by ordinary post and to the Respondent's email address, giving an extended deadline for response of 29 July 2019. As of the morning of 30 July 2019, no response or further documentation has been received from the Respondent.
9. In consideration of the above, I was satisfied to discharge the continued CMD of 16 August 2019 and issue this Decision based on the information provided in the application, at the CMD, and from the Respondent by email.

### **Findings in Fact**

10. On 17 December 2018, the Applicants let the Property to the Respondent under a Private Residential Tenancy with commencement on that same date ("the Tenancy").

11. Under the Tenancy, the Respondent was to make payment of £550 per month in rent to the Applicants on the 17<sup>th</sup> of each month.
12. On 4 April 2019, the Applicants raised proceedings for an order for payment of the rent arrears of £1,650.
13. As of 3 July 2019, there was unpaid rent of £1,148.98 due by the Respondent to the Applicants in terms of the Tenancy being the rent due on the 17<sup>th</sup> of each month from January to June 2019 less payments received in Housing Benefit on 18 April, 20 May and 17 June 2019.
14. The Respondent provided no evidence of payment of any part of the said unpaid rent of £1,148.98.
15. The Respondent provided no detail of a material dispute that the said unpaid rent was due in full.

### **Reasons for Decision**

16. The application was in terms of rule 111, being an order for civil proceedings in relation to a private residential tenancy. I was satisfied, on the basis of the application and supporting papers, and the submissions provided by the Applicants' agent at the CMD, that rent arrears of £1,148.98 were outstanding as at the date of the CMD for rent due up to 16 July 2019.
17. Reading the Respondent's emails generously, two questions arose. The first was whether further payments towards the rent were soon to be made from a benefit claim (apparently Housing Benefit). The second was that the Respondent made reference to repairs not being carried out.
18. Turning to the second point first, the Respondent's position was very vague. There was no information as to which repairs she complained of, when they had been requested, and what rent was being withheld. The Applicants' agent was satisfied that the Respondent had never claimed to withhold rent due to issues with repairs. The Direction sought further information from the Respondent in this regard but none was provided. In the circumstances, I was not satisfied to hold that any part of the rent was not due, or was validly withheld, due to any breach on the part of the Applicants.
19. In regard to whether the arrears arose due to an issue with benefits and would soon be paid, again the Direction sought further information but none was provided. The Respondent made vague references to a "discretionary" claim. The Applicants' agent recalled the Respondent claiming that sums were due back to her from a previous tenancy but it was not clear whether that was the same issue. Certainly, the Respondent gave no evidence that a "discretionary" payment was being considered (or even competent) or what the amount would be. The monthly rental payment outstripped the benefit she received. The Applicants' agent submitted that he had checked and no Universal Credit

application was pending for the Respondent. In all the circumstances, although it appeared that at some point arrears arose due to a delay in processing Housing Benefit, backdated benefit had now been received and a sizable sum in arrears remained, with arrears continuing to rise. I did not see any basis for delaying determination of the application for payment.

20. I was satisfied that the necessary level of evidence for such civil proceedings had been provided. 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. Further rule 18 allows a decision to be made without a hearing. I am satisfied that the Respondent has had an adequate opportunity to engage fully with the application and has failed to do so. On the basis of the information held, I am thus satisfied to grant award the reduced sum of £1,148.98 at this time without conducting the continued CMD.
21. For the avoidance of doubt, this sum is in regard to rent due to 16 July 2019 and no other claim under the Tenancy.

#### **Decision**

22. In all the circumstances, I discharge the continued CMD of 16 August 2019 and grant an order against the Respondent for payment of the sum of £1,148.98 to the Applicants with interest at 8% per annum from today's date until payment.

#### **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.**

Joel Conn

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Legal Member/Chair

31 July 2019  
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Date