

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/CV/19/0628

**Re: Property at 28 Moray Place, Strathbungo, Glasgow, G41 2BL (“the
Property”)**

Parties:

**Ms Adrienne Kelbie, c/o Fineholm Letting Services Ltd, 114 Union Street,
Glasgow, G1 3QQ (“the Applicant”)**

**Mr Gordon Richardson, Mrs Alison Richardson, 28 Moray Place, Strathbungo,
Glasgow, G41 2BL (“the Respondent”)**

Tribunal Members:

Graham Harding (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Applicant was entitled to an order for payment
by the Respondent to the Applicant in the sum of £8325.00.**

Background

1. By application dated 25 February 2019 the Applicant’s representatives Fineholm Letting Services Ltd applied to the Tribunal on the Applicant’s behalf for an order against the Respondents for payment in respect of alleged rent arrears arising from the Respondents private residential tenancy of the property. The applicant’s representatives provided the Tribunal with copy rent statement, copy emails, copy tenancy agreement and mandate in support of the application.
2. By Notice of Acceptance dated 7 March 2019 a legal member of the Tribunal with delegated powers accepted the Application and a Case Management discussion was assigned.

3. A Case Management Discussion was held at Glasgow on 25 April 2019 in the absence of the Respondents. The Applicant was represented by her representatives Fineholm Letting Services Ltd. The Tribunal allowed the application to be amended to the extent that the claim was for "*a payment order for outstanding rent - £8325.00 or such other sum as may be due as at the date of the hearing.*" The Tribunal adjourned the case to a further Case Management Discussion to take place on 28 May 2019 at 10.00 at the Glasgow Tribunals Centre and ordered that the Applicant lodge an up to date rent statement within 7 days.
4. By email dated 29 April the Applicant's representatives submitted an up to date rent statement to the Tribunal showing the rent due by the Respondents as at 18 April 2019 to be £8325.00.
5. Intimation of the Case Management discussion together with enclosures was served on the Respondents by Sheriff Officers on 10 May 2019.

Case Management Discussion

6. The Case Management Discussion was attended by Sally Beard and Ellen Hamilton of Fineholm Letting Services Limited on behalf of the Applicant. The Respondents did not attend. The tribunal on being satisfied that proper intimation of the Case Management Discussion had been given to the Respondents by Sheriff Officers proceeded with it in their absence in accordance with Rule 29 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Regulations").
7. Ms Beard explained that the Respondents continued to reside in the property. Although the Applicant had been granted an eviction order in the previously conjoined case FTS/HPC/EV/19/0626, this was now subject to review procedure. Ms Beard thought that case would be dealt with along with these proceedings but the Tribunal explained that only the payment case was being dealt with today.
8. Ms Beard explained that as the order for eviction had been recalled the rent now due by the Respondents amounted to £9775.00 and the Applicant was looking for an order for payment in that amount. Ms Beard confirmed that no up to date rent statement had been lodged with the Tribunal showing the current amount due beyond that lodged on 29 April 2019.
9. Following some discussion between the Tribunal Chairman and the Applicant's representatives, Ms Hamilton asked the Tribunal to grant an order for payment in the sum of £8325.00 having taken the Tribunal through the payments made by the Respondents as detailed on the rent statement submitted on 29 April.
10. The Tribunal referred the Applicant's representatives to the correspondence received from the Respondents dated 18 April 2019 in which they indicated that they would make weekly rental payments and expected to be in a position

to raise funds to clear the rent arrears in full by 6 May 2019. Ms Beard confirmed that no payments had been received since £375.00 had been paid on 1 April 2019.

Findings in Fact

11. The parties entered into a private residential tenancy agreement that commenced on 18 May 2018. After an initial period of three months at a reduced rent the monthly rent was £1450.00.
12. As at 18 April 2019 the rent arrears due by the Respondents to the Applicant amounted to £8325.00.
13. The Respondents remain in occupation of the property and the tenancy is continuing whilst the Applicant seeks to evict them.
14. A further £1450.00 became due on 18 May 2019.

Reasons for Decision

15. Having been satisfied that the Respondents had been given notice of the Case Management discussion and were aware that the application had been amended to increase the sum claimed to at least £8325.00 the Tribunal felt it could proceed to consider the application in the absence of the Respondents.
16. Although the application had been amended to include such sum as may be due as at the date of the hearing, the Tribunal did not consider that the interests of justice would be served if an order for an amount was granted against the Respondents without them first being aware of what that amount was. The Tribunal was therefore of the view that in order to have been able to grant an order for the increased amount initially being sought by the Applicant's representatives it would have been necessary for the additional sum to have been sought from the Tribunal and intimated to the Respondents in advance of the Case Management Discussion with the appropriate notice being given. In any event as the tenancy was continuing pending a final decision on the eviction proceedings there would be nothing to prevent the applicant making a further application to the Tribunal in due course if further rent arrears were to accrue.
17. In making its decision the Tribunal took account of the submissions of the Applicant's representatives and also the correspondence submitted by the Respondents. It appeared to the Tribunal that although the Respondents may well have found themselves in difficult financial circumstances their various proposals to raise funds or make regular payments to reduce the arrears had not materialised and in the circumstances the Applicant was entitled to the order sought for payment of the amended sum of £8325.00.

18. The Respondents had not made any application under the Debtors (Scotland) Act 1987 and therefore it was not necessary to consider making a Time to Pay Direction.

Decision

The Tribunal finds the Applicant entitled to an order for payment by the Respondent to the Applicant in the sum of £8325.00.

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.

G Harding

Legal Member/Chair

28 May 2019

Date