



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)**

**Chamber Ref: FTS/HPC/CV/22/3445**

**Re: Property at Flat 7, 10 Montrose Street, Clydebank, G81 2JF (“the Property”)**

**Parties:**

**Miss Marzena Kurnicka, Flat 7, 10 Montrose Street, Clydebank, G81 2JF (“the Applicant”)**

**Mr Andrew Smith, Flat 7, 10 Montrose Street, Clydebank, G81 2JF (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member) and Ann Moore (Ordinary 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 by the Respondent in the sum of £1,000 should be made in favour of the Applicant.**

**Background**

1. By application received 20 September 2022, the Applicant sought a payment order against the Respondent in respect of rent arrears which at that time amounted to £1,000. Supporting documentation was submitted with the application, including a copy of the tenancy agreement and a rent statement.
2. The application was subsequently accepted by a Legal Member of the Tribunal acting with delegated powers from the Chamber President who issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations. Notification of the application was then made to the Respondent and the date, time and arrangements for a Case Management Discussion (“CMD”) were intimated to

both parties, advising of the date by which any written representations should be lodged 19 December 2022). Said notification was served on the Respondent by Sheriff Officer on 1 December 2022.

3. The Respondent made a postponement request to the Tribunal on 21 December 2022 on the basis that he wished an opportunity to seek advice. This request was considered in terms of Rule 28 of the Regulations and refused by the Tribunal on the basis that the Tribunal did not consider cause to have been shown justifying a postponement. The Tribunal noted that the papers had been served on the Respondent on 1 December 2022 and that the CMD was not due to take place until 23 January 2023 which the Tribunal considered had given the Respondent sufficient time to seek advice and also gave him a further opportunity to seek advice before the CMD.
4. The Respondent subsequently, by email to the Tribunal on 16 January 2023, made a payment offer in respect of the rent arrears which was circulated to the Tribunal and the other party. On 19 and 20 January 2023, the Respondent emailed further representations to the Tribunal and also indicated that he could not attend the CMD due to a change in circumstances and made further reference to the payment proposal he had submitted previously. These emails were circulated to the Tribunal and the other party. The Respondent did not request a postponement of the CMD. The Tribunal Administration sought clarification from him regarding this and the Respondent further emailed the Tribunal on Saturday 21 January 2023 confirming that he was seeking a postponement. The Tribunal Members and other party were made aware of this further postponement request on the Monday morning of the CMD.

### **Case Management Discussion**

1. A Case Management Discussion (“CMD”) took place by telephone conference call on 23 January 2023 at 10am, attended by the Applicant’s agent, Mr Kris Brown (owner) of Source Property (Scotland) Ltd. Although the Respondent was not expected to attend, given the communications he had sent to the Tribunal, the commencement of the CMD was delayed for over 5 minutes to allow an opportunity for the Respondent to join late but he did not do so.
2. After introductions and introductory remarks, the Tribunal firstly considered the further postponement request which had been emailed by the Respondent over the weekend. Given the timing of this postponement request, it had not yet been formally processed and circulated by the Tribunal Administration but the Tribunal Members and Mr Brown had been made aware of its terms. Mr Brown indicated that he was opposed to the CMD being postponed as he considered this was just a delaying tactic and made reference to the previous postponement request which had been refused by the Tribunal. The Tribunal considered the request in terms of Rule 28 of the Regulations and, again, were not satisfied that cause had been shown by the Respondent for a postponement. The Tribunal considered that a previous postponement request had been refused several weeks ago, that the current request had been made at the very last minute and did not provide any detail as to why the Respondent

could not attend the CMD and also that the Respondent had made a payment proposal so did not appear to be disputing that the rent arrears claimed were due. Having regard to the overriding objective for the Tribunal to deal with proceedings justly, the Tribunal did not consider it would be just to postpone the CMD in the circumstances. The Tribunal accordingly refused the Respondent's further postponement request and decided to proceed with the CMD in the absence of the Respondent.

3. The Applicant's agent, Mr Brown, was asked to address the application and confirmed that the landlord was still seeking a payment order in respect of the rent arrears and did not wish to accept the payment offer which had been made by the Respondent. The Applicant's agent also answered questions from the Tribunal Members. The Tribunal noted that the rent arrears sought in terms of the application was £1,000 and that, although further arrears had accrued since, no application had been made to the Tribunal to increase the sum sought prior to the CMD. Mr Brown confirmed that the Respondent had been a tenant of the Applicant since 2014 and that the Applicant had correctly followed the process here in order to increase the monthly rent from £400 to £525 and that the increased figure applied from the beginning of 2022. Reference was made to the supporting documentation lodged with the application in this regard. The Respondent indicated at that time that he could not afford the increased rent but did not formally appeal against it. Since then, he has failed to communicate with the Applicant's agent. He has continued to pay the rent at the original amount of £400 per month. The rent arrears which have accrued are due to the increase in the monthly rental of £125 per month not having been paid by the Respondent since the increase took effect in January 2022. Due to the Respondent's failure to communicate with the Applicant's agent, the agent does not know the Respondent's current financial and personal circumstances, nor whether there has been any change in that regard. The agent is aware that, at an earlier stage in the tenancy, the Respondent was employed in a supermarket and lived alone. He does not know if the Respondent is still employed or if there has been any change in his income. Although the Respondent is in receipt of the Housing element of Universal Credit, the Respondent's benefits have always been paid directly to him and the Respondent has then made his rent payments direct to the Applicant's agent. The agent does not know whether the Respondent has applied to the DWP for assistance in paying the increased rent. The agent has not been contacted by any adviser or solicitor instructed by the Respondent. As to the payment offer received from the Respondent, the Applicant's agent advised that it was not acceptable to the Applicant and did not consider that the Respondent should be given further time to pay. He considered that the Respondent was simply seeking to delay the process further and that this was not a reasonable nor realistic payment offer. The rent arrears are continuing to increase every month as the rental payments have continued to be short by £125 per month since the Tribunal application was lodged in September 2022. The offer is not particularly clear in its terms but it appears that the Respondent is proposing to continue making rental payments at the rate of £400 per month (rather than the increased amount of £525) which would mean that the shortfall of £125 per month would continue to accrue. The Respondent states that he will then make various lump sum payments of £1,000 but gives no indication as to how he will be able to achieve this and from

his lack of engagement with the Applicant's agent to date, the agent does not consider this to be a genuine nor a realistic offer. The Respondent has not provided any detail of his financial circumstances nor made any additional payments prior to the CMD. The Applicant' agent requested that the Tribunal grant a payment order in the full amount sought, at the CMD today, rather than continuing the application further.

### **Findings in Fact**

1. The Applicant is the joint owner and the landlord of the Property.
2. The Respondent has been the tenant of the Property since 2014, currently by virtue of a Private Residential Tenancy which commenced on 30 October 2018.
3. The rent in respect of the tenancy was initially £400 per calendar month.
4. The Applicant increased the rent to £525 per calendar month using the process available in terms of the Private Housing Tenancies (Scotland) Act 2016 and outlined in the tenancy agreement.
5. The increased monthly rental applied from 1 January 2022.
6. Since the rent increase was applied, the Respondent has continued to make payment at the rate of £400 per month, resulting in a monthly shortfall in the rental payments being made of £125.
7. When the application was made to the Tribunal on 20 September 2022, the rent arrears amounted to £1,000.
8. The rent arrears have continued to accrue at the rate of £125 per month as the shortfall is still not being paid.
9. No payments towards the rent arrears have been made by the Respondent since the Tribunal application was made.
10. The Applicant through her letting agent, has sought payment from the Respondent on several occasions towards the rent arrears but the Respondent has failed to engage or enter into an acceptable payment arrangement.
11. The Respondent had not made a formal time to pay application and did not attend the CMD.
12. The sum sought in terms of the application of £1,000 is due and resting owing by the Respondent to the Applicant in respect of rent arrears incurred during the tenancy and has not been paid by the Respondent.

## Reasons for Decision

1. The Tribunal considered all of the background papers, including the application and supporting documentation and the oral submissions made on behalf of the Applicant at the CMD.
2. The Tribunal noted that the Applicant requested the Tribunal to grant a payment order for the total arrears balance now owing, which has increased from the £1,000 outstanding when the Application was submitted by the further sum of £125 per month. However, no application to increase the sum claimed had been made by the Applicant in terms of Rule 14A of the Regulations and the Respondent was not in attendance at the CMD so could not be given the opportunity to comment on the requested increase in the sum sought. Accordingly, the Tribunal refused the request for an order for an increased sum.
3. The Tribunal noted from the written representations received from the Respondent that he did not appear to be disputing the rent arrears nor the sum of £1,000 being sought as he had submitted a payment proposal in advance of the CMD. The Respondent did not attend the CMD. The Tribunal accordingly considered that there was nothing to contradict the information from the Applicant and therefore no requirement to continue the application to an Evidential Hearing. The Tribunal was satisfied that, in the circumstances, a payment order in terms of the application could properly be made at the CMD.
4. The Tribunal was satisfied from the information before it that the sum of £1,000 in unpaid rent is due and resting owing by the Respondent and that an order for payment in that sum should accordingly be made. In respect of the Respondent's payment proposal, the Tribunal noted that the Respondent had not formally made a request for a time to pay direction; that the terms of his payment offer were not particularly clear; that he had not provided any detail of his current employment, personal or financial circumstances (other than that he was in receipt of Universal Credit) or how he would afford the payments offered. The Tribunal was also persuaded by the Applicant's agent's arguments that the payment offer fell short as there appeared to be no commitment on the part of the Respondent to make the increased rental payments of £525 on a regular ongoing basis (aside from the arrears); it was unclear how the Respondent would be able to afford the lump sum payments that he was proposing to make; and the Respondent had not sought to make any payments towards the arrears nor enter into a payment arrangement before now. The Tribunal did not consider it reasonable in the circumstances, having regard to the terms of Section 1 of the Debtors (Scotland) Act 1987, as amended, to make a time to pay direction to allow the Respondent to make payment of the sum owing by way of instalments.

## 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.**

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**Legal Member/Chair**

**23 January 2023**  
**Date**