

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2014**

**Chamber Ref: FTS/HPC/CV/22/3005**

**Re: Property at Flat 5/5, West Winnelstrae, Edinburgh, EH5 2ES (“the Property”)**

### **Parties:**

**Mr Alex Spowart and Ms Ruth Lothian, Flat 82/3, West Ferryfield, Edinburgh, EH5 2PU (“the Applicants”) and**

**ELP Arbuthnott McClanachan Solicitors, 98 Ferry Road, Edinburgh EH6 4PG (“the Applicants’ Solicitors”) and**

**Miss Iona Hamilton, Flat 5/5, West Winnelstrae, Edinburgh, EH5 2ES (“the First Respondent”) and**

**Lord Duncan Hamilton, 43 Farquhar Terrace, South Queensferry, EH30 9RW (“the Second Respondent”)**

### **Tribunal Members:**

**G McWilliams- Legal Member**

**A Lamont- Ordinary Member**

### **Background**

- 1. The Applicant had applied under Rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the 2017 Rules”) (Application for civil proceedings in relation to a private residential tenancy) for an order for payment in respect of rent arrears.**

## **Case Management Discussions**

- 2. A Case Management Discussion (“CMD”) proceeded remotely by telephone conference call at 10am on 6<sup>th</sup> December 2022. Reference is made to the Notes on that CMD which were prepared by the Tribunal and issued to the parties.**
- 3. A further CMD proceeded remotely by telephone conference call at 10am on 10<sup>th</sup> January 2023. The Applicants’ Representative’s Mr I Wells and the Second Respondent, Mr D Hamilton attended. The First Respondent, Miss Hamilton, did not attend.**
- 4. Mr Wells referred to the updated Rent Statement which his colleague, Mr Hamilton, had sent to the Tribunal’s Office on 20<sup>th</sup> December 2022. He submitted that no rental payments had been made since the CMD on 6<sup>th</sup> December 2022 and that the outstanding rent arrears amount now due to the Applicants is £8340.00. Mr Wells stated that the keys for the Property had not been returned and the Applicants had not been able to recover possession. He said that the Applicants had received a letter from an occupier of a property, which is situated near to the Property, during the recent Christmas period. That neighbour reported a concern that there were still persons residing within the Property. Mr Wells sought the grant of the Eviction Order as well as an Order for Payment of the outstanding rent arrears amount. Mr Wells said that the Applicants remain willing to discuss the possibility of reaching an agreement, for repayment of the rent arrears, with the Respondents.**
- 5. Mr Hamilton, the Second Respondent, said that he had previously been told by his daughter, the First Respondent, that she had moved out of the Property. He stated that he understood that his son, Kieran Hamilton, stopped occupying the Property on 6<sup>th</sup> January 2023. At the CMD on 6<sup>th</sup> December 2022 Mr Hamilton had stated that his son had left the Property. He re-iterated that he had told his daughter, and son, to return the Property keys to the Applicants’ Representative’s office. He acknowledged that he was guarantor for rental arrears and stated that he could not contradict the amount of arrears stated by Mr Wells. Mr Hamilton also re-iterated that he thought that his daughter was resolving the issue of payment of rent arrears through a debt advice company. He stated that he had been trying to contact his daughter over the last few days to ascertain her up to date position regarding this Application and the linked Application for an eviction order EV/22/3003, and to have her attend at the CMD on 10<sup>th</sup> January 2023, but that she had not yet responded to him.**

## **Statement of Reasons for Decision**

- 6. In reaching their decision the Tribunal had regard to the terms of Section 71 of The Private Housing (Tenancies) Act 2016 provides as follows:**

**(1) In relation to civil proceedings arising from a private residential tenancy-**  
**(a) the First-tier Tribunal has whatever competence and jurisdiction a sheriff would have but for paragraph (b),**

**(b) a sheriff does not have competence or jurisdiction.**

**(2) For the purposes of subsection (1), civil proceedings are any proceedings other than-**

**(a) the prosecution of a criminal offence,**

**(b) any proceedings related to such a prosecution.**

**7. Accordingly, the Tribunal has jurisdiction in relation to claims by landlords (such as the Applicants) for payment of unpaid rent against a tenant and guarantor (such as the respective Respondents) in respect of a PRT such as this.**

**8. The Tribunal considered all of the Application papers, and the submissions and representations of Mr Wells and Mr Hamilton, the Second Respondent. Having done so, the Tribunal found, on a balance of probabilities, that there were arrears of more than three months' rent and the outstanding rent arrears amount was £8340.00. Neither Respondent had submitted or made representations which contradicted the arrears amount, which had been foreshadowed in the Notes on the CMD dated 6<sup>th</sup> December 2022.**

**9. The Tribunal had checked with their office and noted that the First Respondent, Miss Hamilton, had been served with papers, notifying her of the CMD on 10<sup>th</sup> January 2023, at the address given by the Second Respondent, 132/13 Pennywell, Medway, Edinburgh EH4 4SF, on 14<sup>th</sup> December 2022 by recorded delivery post. Whilst the Tribunal's office had not yet received Royal Mail's confirmation of delivery of those papers the Tribunal found, on a balance of probabilities, that Miss Hamilton was aware of these proceedings, in particular given the Second Respondent Mr Hamilton's representations at both CMD's. The Tribunal further found that the Second Respondent, Mr Hamilton, was contractually obliged to pay the rent arrears due, as a named Guarantor in the parties' Private Residential Tenancy Agreement ("PRT"). Accordingly, the Tribunal decided that it was fair and just that an Order for Payment be granted against both Miss Hamilton and Mr Hamilton, jointly and severally, as sought by Mr Wells. The Tribunal was satisfied that there was an outstanding balance of rent arrears of £8340.00 and that it was reasonable to grant an order for payment by the Respondents, jointly and severally, to the Applicants in that amount.**

**10. The Tribunal also stated to Mr Wells and Mr Hamilton that it was unfortunate that matters had not been resolved since the CMD on 6<sup>th</sup> December 2022 and that now, on balance, the Tribunal considered that it was fair and just to afford the Applicants the protection of the grant of the Order sought. The Tribunal expressed their hope that the keys to the**

Property will be returned to the Applicants' Representative's office as soon as possible and that an arrangement for repayment of the rent arrears can also be reached so that the Order does not require to be enforced. Mr Hamilton said that he understood the Tribunal's reasoning for granting the Order.

### **Decision**

11. Accordingly, the Tribunal made an order for payment by the First Respondent, Miss Iona Hamilton, and the Second Respondent, Lord Duncan Hamilton, jointly and severally, of the sum of EIGHT THOUSAND THREE HUNDRED AND FORTY POUNDS (£8340.00) Sterling to the Applicants, Mr Alex Spowart and Ms Ruth Lothian.

### **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.

**Legal Member: G McWilliams**

**Date: 10<sup>th</sup> January 2023**