



**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 2016 and Rule 111 of The First-tier Tribunal for Scotland housing and Property Chamber (Procedure) Regulations 2017**

**Chamber Ref: FTS/HPC/CV/20/1103**

**Re: Property at Flat 2, 8 Tower Street, Cumnock, KA18 1AY (“the Property”)**

**Parties:**

**Mr David Litman, 20 Craigens Road, Cumnock, KA18 3AS (“the Applicant”)**

**Mr Nathan Gibson, Flat 2, 8 Tower Street, Cumnock, KA18 1AY (“the Respondent”)**

**Tribunal Member:**

**Martin McAllister (Legal 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 be made in favour of the Applicant against the Respondent for the sum of Three Thousand Three Hundred and Twenty One Pounds 21 pence (£3,321.21).**

**Background**

- 1. This is an application for an order of payment raised by the Applicant in respect of rent arrears. The Applicant and Respondent are parties to a Private Residential Tenancy Agreement in respect of the Property. The tenancy commenced on 24<sup>th</sup> September 2019 and the monthly rental due is £303. The Tribunal granted an order for eviction on 11<sup>th</sup> August 2020.**
- 2. A Case Management Discussion was held on 11<sup>th</sup> August 2020. This was continued to 14<sup>th</sup> September.**
- 3. The application is in respect of rent arrears and is dated 14<sup>th</sup> April 2020. The sum sought in the application is £1,485 plus £62.42 in respect of**

costs. The Applicant had lodged an updated rent statement prior to the case management discussion on 11<sup>th</sup> August 2020 showing rent arrears of £3,268 as at 11<sup>th</sup> August 2020. No formal intimation of this had been served on the Respondent and it was decided that the case management discussion be continued to another date to allow the Applicant to intimate the current level of arrears on the Respondent. It was explained to the Applicant that the Tribunal would require to be satisfied on the intimation.

4. The case management discussion on 14<sup>th</sup> September 2020 was held by audio conferencing because of the current Covid-19 pandemic. The Applicant was present. There was no appearance by the Respondent and the commencement of the case management discussion was delayed until 10.10 am.
  5. On 10<sup>th</sup> September 2020, the Applicant lodged documents with the Tribunal. These consisted of a letter to the Respondent from the Applicant and dated 10<sup>th</sup> September 2020, a certificate of posting dated 10<sup>th</sup> September, copy of screenshot Whats App messages and text messages which appeared to be between the Applicant and the Respondent, copy photographs, copy emails and copy rent statement showing rent arrears of £3,259.40.
  6. On 12<sup>th</sup> September the Applicant sent an email to the Tribunal attaching a Whats App screenshot of what appeared to be exchanges between the Applicant and Respondent.
7. The following documents were considered by the Tribunal;
- a) Private residential tenancy agreement dated 24<sup>th</sup> September 2020.
  - b) Application Form received by the Tribunal on 20<sup>th</sup> April 2020.
  - c) Rent statement showing arrears of £3,259.40.
  - d) Copy photographs.
  - e) Copies of screenshots of various Whatsapp and text messages.
  - f) Copy of letter from Applicant to Respondent dated 10<sup>th</sup> September 2020.
  - g) Copy of emails.
  - h) Copy of certificate of posting dated 10<sup>th</sup> September 2020.

#### **The Case Management Discussion**

7. The purpose of a case management discussion was explained by the Legal Member.
8. Mr Litman said that he considered that the application should be able to be determined without a Hearing. He said that the Respondent was aware of the sum being sought and that he had intimated this to him. He said that the Respondent had had the opportunity to challenge the sum he is seeking. Mr Litman said that the Respondent was still occupying the property and that the rent arrears were accruing.

9. The Applicant directed the Tribunal to what he had lodged since the previous case management discussion. He said that the required intimation had been given to the Respondent. He said that this had been done by recorded delivery, email, text, Whats App messages and personal delivery:

- a) The Tribunal was referred to the letter from the Applicant to the Respondent dated 10<sup>th</sup> September. This stated “Please find enclosed your latest up to date Rent Book. It shows that as of today, you are £3,259.40. in arrears.” Mr Gibson said that he had hand delivered this letter to the Respondent on 10<sup>th</sup> September 2020 and said that the photograph of an arm behind a partially open door showed the Respondent receiving the letter. He said that the letter was sent by recorded delivery on the same day and referred to the Certificate of Posting dated 10<sup>th</sup> September 2020. The Applicant did not have a copy of the track and trace documentation for this letter.
- b) The Tribunal was referred to a copy email from the Applicant to the Respondent dated 10<sup>th</sup> September 2020 which mirrored the content of the letter of 10<sup>th</sup> September 2020.
- c) The Tribunal was referred to the screenshots of the WhatsApp messages and, in particular, exchanges dated 10<sup>th</sup> and 12<sup>th</sup> September 2020. Mr Litman said that the message he had sent to the Respondent on 10<sup>th</sup> September 2020 and his response on 12<sup>th</sup> September evidenced that the Respondent was aware that the sum of arrears being sought by him is £3,259.40: 10<sup>th</sup> September- “Further to my previous emails, texts and Whats App messages, please find attached your latest up to date Rent Book. It shows that as of today, you are £3,259.40 in arrears.” This message was accompanied by a rent statement showing the sum due as at 10<sup>th</sup> September 2020 to be £3,259.40. On 12<sup>th</sup> September 2020, the Respondent sent a message to the Applicant- “Why are you still harassing me you weirdo.”
- d) The Tribunal was referred to a text message from the Applicant to the Respondent dated 10<sup>th</sup> September 2020 which mirrored the Whats App message of the same date.

10. Mr Litman said that he had paid Sheriff Officers for service of the Notice to Leave and that the cost was £62.42. He said that this was contained in the Application and that the Respondent would therefore have intimation that he was seeking this sum. He directed the Tribunal to the Ancillary Terms contained in the Private Residential Tenancy Agreement which stated that a landlord was entitled to recover reasonable costs as a result of the tenant’s failure to pay rent.

## 11. Findings in Fact

1. The Respondent is contractually bound to pay rent of £70 per week to the Applicant in respect of the Property.
2. There are arrears of rent amounting to £3,259.40.
3. The Respondent paid the sum of £62.42 in respect of Sheriff Officer’s costs.

## **Reasons**

- 12. The Tribunal accepted that the Respondent had an obligation to pay rent in accordance with the private residential tenancy agreement which was before it.**
- 13. The Tribunal accepted, that in terms, of the rent statement before it, the Respondent was in arrears of rent amounting to £3,259.40. The Respondent had not challenged that he was in arrears of rent and the Tribunal was satisfied that he had received intimation of the sum being claimed. He had responded to the Whats App message sending the relevant rent statement and the Tribunal also found Mr Litman to be credible when he stated that he had personally delivered the statement and letter to the Respondent on 10<sup>th</sup> September 2020. The texts and email messages were also persuasive.**
- 14. It was reasonable for the cost of Sheriff Officers in serving the Notice to Leave to be recovered by the Applicant.**
- 15. The Tribunal considered that it had sufficient information to determine the Application without a Hearing. The Respondent had not submitted that there was any defence to the sum being claimed and it accepted the evidence of the Applicant and also documents which had been lodged in support of the claim.**

## **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.**

**Martin McAllister**

**Martin J. McAllister, Legal Member  
14<sup>th</sup> September 2020**