



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) Act 2016

Chamber Ref: FTS/HPC/CV/20/2026

Re: Property at 44 Raploch Street, Larkhall, ML9 1AE (“the Property”)

Parties:

Scott Building Services, 4 Middleton Avenue, Strutherhill Industrial Estate, Larkhall, ML9 2TL (“the Applicant”)

Mr Ross Andrew Quinn, 44 Raploch Street, Larkhall, ML9 1AE (“the Respondent”)

Tribunal Members:

Jan Todd (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 in favour of the Applicants should be granted in the sum of £1,072.

- **Background**

1. This was the first case management discussion (CMD) in respect of an application by the Applicant dated 22nd September 2020 seeking an order for payment of the sum of £1,122 in respect of arrears of rent for the Property against the Respondent.
2. The following documents were lodged with the application:-
 - A copy of the Tenancy Agreement dated 24th May 2018
 - Rent Schedule from 25th May 2018 to 11th September 2020
 - Bank statements ,

3. Due to the Covid 19 pandemic the case management discussion was scheduled to take place by teleconference on 18th November at 2pm.
4. The legal member prior to this CMD had issued a Direction asking for clarification of what the sum of £50, which had been part of a payment made by the Respondent on 12th October 2020 but had not been credited to either the rent account or the deposit but to another column marked "other", paid by the Respondent had been credited to.
5. The Applicant's representative is ELT Lettings Co and they confirmed by e-mail of 10th November that the £50 payment had been deducted as a late payment fee.

CMD discussion

6. The CMD proceeded today by way of teleconference due to the continued requirement at the current time for social distancing. The Convener made introductions, and explained how the CMD would be conducted over the teleconference. The Applicant did not attend but was represented by Mr Cheryl Young as the Applicant's representative from ELT Lettings Ltd. The Applicant is a company whose director Mr Colin Scott had confirmed by letter dated 6th November 2020, that ELT Lettings had authority to act as his representative in relation to this Property and application.
7. The Respondent did not attend nor was he represented on the teleconference. The Respondent had been served notice intimating the date and time of the CMD personally by sheriff officers on 20th October 2020. The Respondent has been given fair notice and the Tribunal therefore felt it was appropriate and fair to continue in his absence.
8. Ms Young advised at the outset that she had just sent the Tribunal a revised rent statement showing a revised sum due of £1,142. She explained that the Respondent had agreed to several payment plans over the period of the lease and the arrears becoming due, the latest one being agreed in July 2020 which was to pay a weekly sum of £150. However she advised that he had failed to pay this consistently and the arrears had not gone down but had in fact increased slightly by £20.
9. The written documentation shows a tenancy had been created between the parties where the Respondent leased the Property from the Applicant from 24th May 2018 with a monthly rent due of £360 on 25th of each month.
10. From the revised rent statement lodged arrears of £1122 had built up by 11th September 2020, with Ms Young confirming that arrears had accrued from July 2018 due to late and underpayments by the Respondent. She confirmed that the Respondent has not been in touch or responded to any of the documentation or calls the representatives have made.
11. Ms Young advised that the latest statement shows that the Respondent has missed weekly payments due on 4th and 18th September, 16th and 23rd October and 6th November and referred to the revised rent statement which shows a new sum due after the monthly rent sums due are taken into account of £1,142. The legal member advised that if Ms Young wished to amend her application to ask for an increased sum claimed this would need to be intimated on the Respondent with at least 14 days' notice and she confirmed that in the

circumstances she did not wish to amend the sum claimed but would seek an order for the original sum claimed as that was just slightly less than the sum currently outstanding.

12. The legal member then enquired as to what legal right the applicant had to charge a late payment fee of £50 and Ms Young was unable to advise on that point not having immediate access to the tenancy agreement on her system. Ms Young did confirm that no further late payment fees were charged as they had felt this was not worthwhile given the Respondent was struggling to maintain payments of arrears of rent.

Findings in Fact

1. The parties entered into a lease of the Property which commenced on 25th May 2018 and is a Private Rented Tenancy.
2. The Rent due in terms of the lease is £360 due monthly on 25th day of each month and payable in advance.
3. The Tenant is still living in the Property. The parties came to an arrangement whereby the Respondent agreed to pay the sum of £150 weekly to pay the current rent due and to pay towards the arrears due, but has failed to make payments every week since the end of August 2020 missing 5 weekly payments to date.
4. There is no evidence to show that the Applicant is entitled to charge a late payment fee.
5. The rent due as at the date of the application was £1072 being the sum shown in the rent statement less the £50 paid by the tenant but not credited to the rent account but accepted as a late payment fee.
6. The sum due today as shown in the revised rent statement (less the £50) is £1,092.
7. The Respondent has not made any progress in reducing his arrears.

Reasons for Decision

8. The parties entered into a lease where the Respondent has leased the property from the Applicant from 25th May 2018 and has agreed to pay £360 monthly in rent.
9. The Respondent has failed to make full payment of rent since July 2018 and arrears of £1072 have accrued as at the date of this application.
10. The Applicant is entitled to recover rent lawfully due.
11. The Applicant entered into an arrangement for a payment plan with the respondent whereby they agreed to accept £150 each week from the Respondent to reduce and eventually clear his arrears. The Respondent has paid some weeks but not all and the arrears have not reduced and indeed have slightly increased by today's date. The Respondent has therefore not complied consistently with the agreed payment plan.
12. The Tribunal accepts the written evidence and verbal statements made by the Applicant's agent, who the Tribunal found clear and credible in her evidence that the rent outstanding and due by the Respondent amounts to £1,072. In calculating this sum the Tribunal has taken account of the £50 the

Applicant had previously taken from a payment made by the Respondent as a late payment fee as there is no evidence from the tenancy agreement that the Applicant is entitled to a late payment fee. Ms Young accepted this was appropriate and did not wish time to further investigate the matter of whether the Applicant did have authority to deduct a fee for late payments.

13. There being no application for time to pay, the Tribunal makes an order for payment of the sum claimed less £50.

Decision

An Order for payment of the sum of £1,072 is granted.

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.

Jan Todd

18th November 2020

Legal Member/Chair

Date