

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(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/21/1667

Re: Property at 13 Atholl Street, Hamilton ML3 0PH (“the Property”)

Parties:

**Mr Brian Gibson, 193 Dalrymple Street, Girvan KA26 9BG (“the Applicant”),
and**

**Bannatyne, Kirkwood, France Solicitors, 16 Royal Exchange Square, Glasgow
G1 3AG (“the Applicant’s Representative”) and**

**Mr Jason Cushley, 13 Atholl Street, Hamilton ML3 0PH (“the First
Respondent”) and**

**Mrs Jean Cushley, Flat 2/2 16 Brandon Street Hamilton ML3 7AB (“the Second
Respondent”)**

Tribunal Members:

**G McWilliams- Legal Member
M Lyden- Ordinary Member**

Decision:

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determines to grant an order for payment by the Respondents, jointly and severally, to the Applicant of the sum of £3210.19 with interest at the rate of 3% per annum from the date of this decision until payment.

Background

1. This Application was brought in terms of in terms of Rule 111 (Application for civil proceedings in relation to a private residential tenancy) of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure (“the 2017 Rules”).

Case Management Discussion 7th October 2021

2. A Case Management Discussion (“CMD”) proceeded remotely by telephone conference call at 10am today. The Applicant’s Representative’s Ms E Matheson and the First Respondent attended. The Second Respondent did not attend and was not represented. Neither Respondent had lodged written representations with the Tribunal.
3. Ms Matheson stated that the First Respondent was in arrears of rent in the sum of £2785.19. The First Respondent candidly stated that there were further arrears owing of £425.00. It was agreed that the total arrears owing, at present, are in the sum of £3210.19. The First Respondent said that he is not working, has applied for Universal Credit and that it is his intention to make payment of arrears after he has left the Property and once he has gained work. The First Respondent said that the Second Respondent had signed the private residential tenancy agreement as a guarantor for his liability for rent and other charges at the same time as he did so. He stated that both signed electronically after being sent emails by the letting agents.. Ms Matheson said that the Applicant was adversely affected, financially, as a result of the increasing rent arrears. She sought an order for payment against both Respondents, jointly and severally, in the agreed sum of £3210.19 with interest as determined by the Tribunal.

Findings in Fact and Law and Reasons for Decision

4. 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.

5. Accordingly, the Tribunal has jurisdiction in relation to claims by landlords (such as the Applicant) for payment of unpaid rent against a tenant and any

guarantor (such as the Respondents) in respect of a private residential tenancy such as this.

6. The First Respondent agrees that the total arrears owing, at present, are in the sum of £3210.19. He is not presently working or in receipt of DWP benefit. The Respondent intends to make payment in respect of arrears after he has left the Property and once he has gained work.
7. The Second Respondent signed the written private residential tenancy agreement of the Applicant and First Respondent to guarantee her joint and several liability, with the First Respondent, for unpaid rent and other charges due by the First Respondent in terms of the private residential tenancy.
8. The Respondents are jointly and severally liable to make payment of unpaid rent arrears, of £3210.19, to the Applicant. It is reasonable and proportionate to apply interest to that amount at the rate of 3% per annum, from the date of today's decision.

Decision

9. Accordingly, the Tribunal makes an order for payment by the Respondents, jointly and severally, to the Applicant of the sum of £3210.19, with interest at the rate of 3% per annum from the date of this decision until payment. .

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 McWilliams

7th October 2021

Legal Member

Date