



**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) 2016 Act**

**Chamber Ref: FTS/HPC/CV/21/2362**

**Re: Property at 157 Clement Rise, Livingston, West Lothian, EH54 6LP (“the Property”)**

**Parties:**

**Barbara Thomson, Henry Thomson, 6 Old Well Lane, Bathgate, EH48 2XS (“the Applicants”)**

**Miss Kristina Jagminaitė, Mr Tomas Kochanskis, 157 Clement Rise, Livingston, West Lothian, EH54 6LP (“the Respondents”)**

**Tribunal Members:**

**Joel Conn (Legal Member) and Tony Cain (Ordinary Member)**

**Decision (in absence of the Respondents)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**Background**

1. This was an application by the Applicants for civil proceedings in relation to a private residential tenancy in terms of rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”), namely an order for payment of rent arrears. The tenancy in question was a Private Residential Tenancy of the Property by the Applicants to the Respondents commencing on 17 June 2019.
2. The application was dated 29 September 2021 and lodged with the Tribunal on or around that date. The application was accompanied by a rent statement setting out arrears of £8,250, being sums that had accumulated from non-payment of rent over a period of 11 months from the rent payment date of 17 October 2020. The lease for the tenancy accompanied the application and detailed a rental payment of £750 in advance on the 17<sup>th</sup> of each month.

## **The Hearing**

3. On 9 December 2021 at 10:00, at a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, we were addressed by the Applicants’ solicitor, Euphemia Matheson of Ballantyne Kirkwood France.
4. There was no appearance for the Respondents. We were informed that the Applicants could identify no contact from or behalf either Respondent since 30 March 2021 (and no contact from either Respondent from before that date). The second Respondent’s contact with the Applicant’s letting agents on 13 January 2021 was that he left the Property in August 2020. His further contact on 3 February 2021 was that he left in October 2020. No alternative contact address was provided by him, however, and none of his contact requested a change of the Tenancy Agreement. We considered the evidence of intimation of the CMD, where a Sheriff Officer certified that he had satisfied himself of service on both Respondents at the Property. Having not commenced the CMD until 10:10, we were satisfied to consider the application in the Respondents’ absence.
5. The Applicants’ agent confirmed that the application was still insisted upon and she moved an amendment that she had previously intimated by email on the Respondents on 23 November 2021. She stated that arrears had continued to accumulate and by 23 November 2021 stood at £10,500, being 14 months’ rent in total. The 14 months of unpaid rent covered the period from 17 October 2020 to 16 December 2021.
6. We considered the motion to amend and allowed same. Having granted the motion, the Applicants’ agent sought an order for payment in the amended sum and, there being no interest rate in the Tenancy Agreement, sought interest on the sum under Procedure Rule 41A at 3% or 4% being a range of sums that she thought commensurate with the loss of use of funds, to be made from the date of Decision.
7. No motion seeking expenses was made.

## **Findings in Fact**

8. On 17 June 2019, the Applicants let the Property to the Respondents by lease with a start date of 17 June 2019 under a Private Residential Tenancy (“the Tenancy”).
9. Under the Tenancy, in terms of clause 8, the Respondents were to make payment of £750 per month in rent to the Applicants in advance, being a payment by the 17<sup>th</sup> of each month to cover the month to follow.

10. As of 29 September 2021, there was unpaid rent of £8,250 being made up of unpaid rent from the rent payment dates 17 October 2021 to 17 September 2021.
11. On 29 September 2021, the Applicants raised proceedings against the Respondents for an order for payment of rent arrears of £8,250.
12. As of 9 December 2021, the unpaid rent amounted to £10,500 being made up of unpaid rent from the rent payment dates 17 October 2021 to 17 November 2021, covering the period to 16 December 2021.
13. On 3 November 2021, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondents, providing the Respondents with sufficient notice of the CMD of 9 December 2021 and the details for dialling into the conference call.
14. The Respondents provided no evidence of payment of any part of the said unpaid rent of £10,500.

### **Reasons for Decision**

15. The application was in terms of rule 111, being an order for civil proceedings in relation to a PRT. We were satisfied, on the basis of the application and supporting papers, that rent arrears of £10,500 were outstanding as of 9 December 2021.
16. We noted that the second Respondent claimed not to reside at the Property, though the service by the Sheriff Officer said that the officer had determined otherwise (somehow). What was clear was that the second Respondent had not removed himself from the Tenancy and nothing that had occurred – particularly because the first Respondent was believed still to reside at the time of the CMD – had brought the Tenancy or his liability for the rent payments to an end. We were satisfied that the application should be considered in normal terms against them both.
17. As the application clearly set out the sums, we were satisfied that the necessary level of evidence for such civil proceedings had been provided. No dispute was stated by or on behalf of the Respondents. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal and we were satisfied to make a decision at the CMD to award the amended sum of £10,250 against the Respondents.
18. We were satisfied that it was appropriate to award interest from the date of Decision. We were satisfied to grant it at 3%.
19. We note that the application was limited to the rent arrears due under the lease to 16 December 2021 and this Decision does not preclude any future application by the Applicants in regard to any further claim under the lease

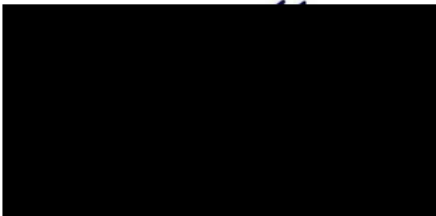
against the Respondents regarding any other potential breach of the lease or arrears for any later period.

### **Decision**

20. In all the circumstances, we were satisfied to make the decision to grant an order against the Respondents for payment of £10,500 with interest at 3% per annum running from today's date.

### **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/Chair**

9 December 2021

**Date**