



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014**

**Chamber Ref: FTS/HPC/CV/22/2530**

**Re: Property at 8 Hatchbank Cottages, Kinross, KY13 9JY (“the Property”)**

**Parties:**

**Mr Michael Rutkowski, 7 Hatchbank Cottages, Kinross, KY13 9JY; (“the Applicant”)**

**Debra Marks 7 Hatchbank Cottages, Kinross, KY13 9JY; ( the Applicant;s representative)**

**Mr Garry Pollock, Mrs Stephanie Pollock, 8 Hatchbank Cottages, Kinross, KY13 9JY (“the Respondent”)**

**Tribunal Members:**

**Jan Todd (Legal Member) and Helen Barclay (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that and an order be granted against the Respondent for payment to the Applicant of £8,741.**

**Background**

1. This was a Case Management Discussion to consider an application made by the Applicant on 23<sup>rd</sup> July 2022 for an order for payment of rent arrears from the Respondent who the Applicant submitted was in arrears of rent of £4,990.75 at the date of the application.
2. The following was submitted with the application:-
  - a. Copy tenancy agreement between the Applicant and the Respondents dated 12<sup>th</sup> January 2017
  - b. Copy summary of rent to May 2022 showing sum due of £4990.75.
3. The application was conjoined with a separate application for eviction of the Respondents case number Ev/22/2529. The Applicant was asked to submit a

clearer rent statement along with other items for the Eviction application and. he lodged an updated rent statement showing a sum due as of September 2022 of £6,241.

4. The Tribunal had notification that Sheriff Officers had successfully served the application and the papers on both respondents at the Property on 28<sup>th</sup> November 2022 personally.
5. On 11<sup>th</sup> January 2023 the Tribunal received an e-mail from Ms Marks, the Applicant's representative asking if the Tribunal had received her revised rent statement sent by e-mail to the Tribunal on 27<sup>th</sup> December requesting an increase to the sum sought to £8,741. She also indicated this request had been sent to the Respondents at the Property address and at their new address of 43 Bowton Road Kinross. Within the submissions was a letter to the Respondents confirming the new amount of rent being sought and confirming that the tenants had reported a burst pipe at the Property on 15<sup>th</sup> December 2022, that the Applicant had attended the Property to carry out an inspection along with the Respondents and found a lot of water damage, recording what had been done to rectify the damage and heat the Property but also noting that when asked if they required alternative accommodation the tenants had indicated they "had another private rental. The letter also notes that the Respondents were still however using the bathroom facilities at the Property and had not vacated the Property with possessions still there.

### **The CMD**

1. The CMD today proceeded by way of teleconference. The Convener made introductions, and explained how the CMD would be conducted.
2. The Applicant was in attendance and confirmed that Ms Marks was his partner and had helped him with administration with this application but as she was neither an owner nor landlord it was confirmed she was his representative. Ms Marks was also on the call but neither of the Respondents attended nor were they represented although the Tribunal allowed further time after 10 o'clock for them to dial in.
3. As the Tribunal was satisfied that service by Sheriff Officer had been properly made on both Respondents the Tribunal members indicated it would be fair to continue and noted that there had been no response from either Respondent in writing.
4. The Applicant advised that he was seeking an order for eviction and an order for payment of rent arrears. He advised that he believed the tenants had done a midnight flit in December but had not removed all their belongings and were still visiting the house to use the bathroom facilities. He referred to a letter Ms Marks had lodged sent to the tenants on 27<sup>th</sup> December recording the damage to the Property from the burst pipe and other damage to it during their tenancy. He also confirmed that the Respondents appear to have another rental property they are occupying but had indicated to him that they were still using this Property and the Applicant himself confirmed they still had a lot of possessions in the property so he was seeking an order of eviction today as well as an order for payment of rent arrears to date. The Applicant indicated that he was concerned that further rent would be due before the

tenants finally left or were evicted and that there would be other costs he would be seeking from them in relation to the state of the property.

5. With regard to the rent the Applicant advised that the first named Respondent is self-employed but he believes has a lot of current work, and his wife the second named respondent has a full time job. He advised there has been no further communication with the Respondents nor any payment since May 2022. He advised that they were continually late with payments but have made no attempt to pay anything since then and have not handed back the keys and appear to be using the house.
6. The Applicant confirmed the amount of rent currently outstanding is £8,471 and this is likely to increase.

### **Findings in Fact**

7. The Applicant and Respondents have entered into an assured tenancy of the Property from 12<sup>th</sup> January 2017 for 6 months which has continued under tacit relocation thereafter.
8. The Applicant is the Landlord and owner of the Property.
9. The Respondents are the tenants.
10. The Tenancy is an Assured Tenancy in terms of the Housing (Scotland) Act 1988.
11. The Respondents obliged themselves to pay rent at £ 625 per calendar month.
12. The tenancy is still ongoing as the tenants have not given notice and are still using and storing possessions at the Property.
13. The Applicant has timeously sought to increase the sum sought and has intimated this on the Respondents.
14. The Arrears of rent at today's date and as intimated are £8,741.00

### **Reasons for Decision**

1. The parties have entered into a lease where the Respondent has leased the Property from the Applicant and has agreed to pay £625 per month in rent.
2. The Respondent has failed to pay the full rent due. The Respondent appears to be living in another property but still using this Property. They have not returned the keys or given notice of termination.
3. The Respondent was served notice of this application by sheriff officer on 28<sup>th</sup> November 2022 and have not made any written representations or attended this CMD. The Applicants provided a revised rent statement by e-mail to the Tribunal on 27<sup>th</sup> December 2022 confirming rent had increased and this has been copied this to the Respondent so the Tribunal finds that the Applicant has successfully intimated a request to increase the sum due.
4. The Tribunal accepts the written evidence and verbal statements made by the Applicant who the Tribunal found clear and credible in his evidence that the rent outstanding as of 1<sup>st</sup> January 2023 is £8471. In the absence of any representations from the Respondent the Tribunal finds it fair and appropriate to make an order for payment for that sum today. There being no application for time to pay the Tribunal makes an order for payment of the sum claimed.

- **Decision**

An order for payment of the sum of £8,471 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  
Legal Member/Chair**

**12<sup>th</sup> January 2023  
Date**