



**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/21/0952**

**Re: Property at 28B Crown Street, Aberdeen, AB11 6AY (“the Property”)**

**Parties:**

**Dr Lorraine Dinardo, Miss Karen Dinardo, Mr Mark Dinardo, Mirren Court One, 119 Renfrew Road, Paisley, PA3 4EA (“the Applicant”)**

**Mr Brandon William Tyrone Kyle, Mr Geoffrey Scott Kyle, Mrs Christina Elizabeth Kyle, 28B Crown Street, Aberdeen, AB11 6AY (“the Respondent”)**

**Tribunal Members:**

**Gabrielle Miller (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicants are entitled to an order for payment amounting to £2175 (TWO THOUSAND ONE HUNDRED AND SEVENTY FIVE POUNDS).**

**Background**

1. An application was received by the Housing and Property Chamber. It was dated 16<sup>th</sup> April 2021. The application was submitted under Rule 111 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on the Respondent not maintaining rent payments.
2. On 15<sup>th</sup> May 2021, all parties were written to with the date for the Case Management Discussion (“CMD”) of 14<sup>th</sup> June 2021 at 11:30am by teleconferencing. The letter also requested all written representations be submitted by 2<sup>nd</sup> June 2021.

## The Case Management Discussion

3. A CMD was held on 14<sup>th</sup> June 2021 at 11:30am by teleconferencing. The Applicants were all present. The Respondents were all present.
4. The Applicants submitted that a Notice to Quit has been issued on the basis of rent arrears. The notice period had not yet expired. It was noted that 3 months rent had been paid in advance of moving in. The following 7 rent payments were paid without issue. Issues started in November 2020 when the rent was paid in bits. On 4<sup>th</sup> December 2020 the outstanding amount of arrears were cleared. The arrears started to accrue from 14<sup>th</sup> December 2020. Partial rent payments were made until 14<sup>th</sup> February 2021. Since that date no rent payments have been made. The Applicants confirmed that they had checked their bank account today and the payment for June had not been made. The current level of arrears stand at £3625.
5. The Respondents told the Tribunal that there had been changes to their income since moving in. A migration from Disability Living Allowance to Personal Independence for Mr Geoffrey Kyle meant a significant reduction in income. This has been appealed twice. Mr Geoffrey Kyle noted that he has had to use his pension due to the loss in income from being migrated from DLA to PIP. This has reduced the amount of his pension. They are currently waiting for the second appeal to take place. The Respondents raised issues over the time repairs took to get done. They consider that there are still outstanding matters but have not raised a Repairing Standards case with the Housing and Property Chamber. They confirmed that they were not withholding rent as a reason for not paying the rent. They also stated that they had applied to the Scottish Hardship Loan Fund. They believed that this had been unsuccessful due to the Applicants raising an application with the Housing and Property Chamber. Once this matter had come to an end they could reapply. They were hopeful for this to pay their arrears and 3 months rent. The Respondents confirmed that as at the date of the Tribunal they were not in a position to pay the outstanding arrears. The Respondents have had ill health. They do not have any other income than ESA for Mrs Christina Kyle and PIP for Mr Geoffrey Kyle. They do not consider that they are able to apply for Housing Benefit. The reason is that Mrs Kyle would need to give up her ESA to apply for Universal Credit to allow them to receive the Housing Element. The process time can be several months. They would not be able to cope financially with almost no income for the intervening period. The Respondents had mentioned that matters had been slower due to Covid. They confirmed that they did not dispute the legality of the Private Rented Tenancy or the amount due.
6. The Applicants noted that some of the repairs had not been completed as they were common repairs and where the duty of the factor to undertake. This was currently in the hands of the factor. They also raised that they believed an eligibility criteria for the Scottish Hardship Loan Fund was that it needed to be repaid meaning that calculations on affordability would be done to confirm that repayments could be made.

## Findings and reason for decision

7. A Private Rented Tenancy Agreement commenced 14<sup>th</sup> January 2020.
8. A rent statement was lodged for the period 4<sup>th</sup> November 2020 – 14<sup>th</sup> April 2021. The Respondents persistently failed to pay their rent charge of £725 per month. The rent payments are due to be paid on 14<sup>th</sup> day of each month.
9. The Respondents have had changes to their income since November 2020 which has affected their finances negatively as their income has been reduced. This has meant that they have not been able to afford to continue to pay their rent. Currently they do not have any other sources of income confirmed.
10. The Respondents are looking into ways to address the arrears but have not had any confirmation of any means to make payment as at the date of the Tribunal.
11. There are no outstanding Universal Credit Housing Element or Housing Benefit issues. The Respondents have not applied for Universal Credit Housing Element due to the adverse effects on their income until it was awarded.
12. The Respondents had been on a migration programme from DLA to PIP. This was not directly due to Covid reasons but in line with Government policy. The Respondents had noted that they had lost money from their son being stopped from going to University due to Covid. Evidence was not provided as to the loss of income or why the course had been cancelled. On balance, it was not accepted that the rent was not paid due to Covid reasons.
13. The arrears sought totalled £2175 which is solely due to rent arrears.

## Decision

14. The Tribunal found that the Applicant was entitled to be granted an order for payment amounting to £2175.

## **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 Miller

14<sup>th</sup> June 2021

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Legal Member/Chair

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Date