



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) concerning application at the request of the Homeowner to review a decision made by it dated 18<sup>th</sup> January 2022, which application was made in terms of Rule 39 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended**

**Chamber Ref: FTS/HPC/CV/21/1762**

**Re: Property at 13 Hare Moss Drive, Portlethen, Aberdeenshire, AB12 4UX (“the Property”)**

**Parties:**

**Ms Pei H Tan, 5 Kirk Brae Court, Cults, Aberdeen, AB15 9QE (“the Applicant”)**

**Mr Angelo Juan Van Wyk, 13 Hare Moss Drive, Portlethen, Aberdeenshire, AB12 4UX (“the Respondent”)**

**Tribunal Members:**

**Neil Kinnear (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for review must be refused.**

**Background**

This was an application for a payment order dated 21<sup>st</sup> July 2021 and brought 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 (Procedure) Regulations 2017* as amended.

The Applicant sought in her application payment of arrears in rental payments of £3,600.00 in relation to the Property from the Respondent, and provided with her application copies of the private residential tenancy agreement and rent arrears statement.

The private residential tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*, and the procedures set out in that Act appeared to have been correctly followed and applied.

The Respondent has been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 12<sup>th</sup> August 2021, and the Tribunal was provided with the execution of service.

Both parties submitted further documents in advance of the Case Management Discussion.

A Case Management Discussion was held at 14.00 on 14<sup>th</sup> September 2021 by Tele-Conference. The Applicant participated, and was not represented. The Respondent participated, and was not represented.

The Applicant confirmed that the three rent payments due on 1<sup>st</sup> June, 1<sup>st</sup> July and 1<sup>st</sup> August referred to in her application had now been paid by the Respondent. However, since she lodged her application, the payment of 1<sup>st</sup> September had fallen due and not been paid. As a result, she wished to seek payment of £1,200 in respect of that September payment.

The Tribunal explained to the Applicant that as all the rent arrears she originally sought in her application had now been paid, she would need to amend her application to instead seek the one outstanding rental payment due on 1<sup>st</sup> September 2021 in terms of the Tribunal's rules of procedure, and the Applicant advised the Tribunal that she would do so.

The Respondent explained that due to a cyber attack, he had been locked out of his internet bank account, which stopped him making the rental payments. However, he had arranged for his employer to make payments on his behalf until he was able to arrange to have his bank account unlocked. That process was more difficult than normal as he was currently working in South Africa, and his British bank required to send him unlocking details by post.

The Respondent understood that all rent payments had been made, and that no payments were outstanding.

As a result of further discussion, it appeared that of the four payments the Respondent had understood had been made of £1,200 each, three of those had been received by the Applicant. However, one payment made in late July had not. The Respondent advised that he would investigate that payment and confirm what had happened with it.

In these circumstances, the Tribunal considered that it was in the interests of justice to continue the Case Management Discussion to allow the Respondent to investigate the payment which he understood had been made, but which the Applicant had not received. The parties were content for that to be done.

Shortly before the continued Case Management Discussion, both parties submitted further documents

A continued Case Management Discussion was scheduled to be held at 10.00 on 21<sup>st</sup> October 2021 by Tele-Conference. Neither party participated, and neither party was represented.

The Respondent e-mailed shortly before the commencement of the continued Case Management Discussion to advise the Tribunal that due to a family medical emergency, he was on his way to hospital and as a result would not be able to participate. He apologised and requested the continued Case Management Discussion be further continued.

The Tribunal's administration attempted to telephone the Applicant, but received no reply to its call.

In those unusual circumstances, the Tribunal considered that it was in the interests of justice to further continue the continued Case Management Discussion one further time to allow both parties the opportunity to attend and make representations to the Tribunal.

The day before the continued Case Management Discussion, the Applicant submitted an updated rent arrears statement.

A continued Case Management Discussion was held at 10.00 on 3<sup>rd</sup> December 2021 by Tele-Conference. The Applicant participated, and was not represented. The Respondent participated, and was not represented.

The Applicant advised the Tribunal that two months' rent was now outstanding totalling £2,400.00. That sum was comprised of the payments due on 1<sup>st</sup> September and 1<sup>st</sup> December 2021.

The Respondent advised that he had transferred the payment due on 1<sup>st</sup> December 2021 today. That payment was coming from South Africa, and had not yet reached the Applicant's bank account. He was perplexed that the payment for September had not been received.

After discussion between the parties and the Tribunal, it became clear that a payment of £1,200.00 made on 20<sup>th</sup> October 2021 from South Africa had not in fact completed, and the sums had not been transferred. The Respondent accepted that the Applicant had not received that payment, and asked for a further adjournment to allow him to rectify that and to investigate why the payment had not gone through the banking system as it should have.

The Respondent advised that he was returning to Scotland on a flight today, and would be able to investigate and arrange the transfer of the payment due from 1<sup>st</sup> September when he arrives back in this country.

In these, again, unusual circumstances, the Tribunal considered that it was in the interests of justice to further continue the continued Case Management Discussion

again one further time to allow the Respondent to make payment of the sum due on 1<sup>st</sup> September 2021, and for his recent payment for the sum due on 1<sup>st</sup> December to be received by the Applicant.

Shortly before the continued Case Management Discussion, the Applicant sent the Tribunal an updated rent arrears statement.

A continued Case Management Discussion was held at 10.00 on 18<sup>th</sup> January 2022 by Tele-Conference. The Applicant participated, and was not represented. The Respondent did not participate, and was not represented.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Tribunal was invited by the Applicant with reference to the application and papers to grant an order for payment of the sum of £1,200.00, which remained the sum outstanding. The Applicant explained that she had received the payment due on 1<sup>st</sup> December 2021, and subsequently also the payment due on 1<sup>st</sup> January 2022. However, the payment due on 1<sup>st</sup> September 2021 referred to above had not been received by her and remained outstanding.

After considering the evidence and submissions made on behalf of the parties, the Tribunal issued its decision and statement of reasons dated 18<sup>th</sup> January 2022 by e-mail dated 18<sup>th</sup> January 2022 to the Respondent granting an order for payment of the sum of £1,200.00 in favour of the Applicant against the Respondent.

### **Previous Application for Review at the Request of the Respondent**

By e-mail from the Respondent to the Tribunal dated 29<sup>th</sup> March 2022, the Respondent requested the Tribunal to review its decision. A letter dated 15<sup>th</sup> March 2022 was attached to the e-mail, which stated that the Applicant had misled the Tribunal on 18<sup>th</sup> January 2022, as the Respondent had paid the sum of £1,200.00 which the Applicant stated remained unpaid.

The Tribunal replied to the Respondent by e-mail dated 5<sup>th</sup> April 2022, in which it requested confirmation from the Respondent that he had copied his request to the Applicant, as the Tribunal's Rule 39(2)(a) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended requires, and to provide evidence that he had done so. The Tribunal also asked the Respondent to confirm if he sought to rely upon Rule 16A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended to extend the time for complying with Rule 39(2)(b), and if so, to provide his reasons as to why the Tribunal should extend the 14 day period.

The Respondent did not reply to the Tribunal's e-mail of 5<sup>th</sup> April 2022, nor to the Tribunal's subsequent e-mail reminder to the Respondent of 22<sup>nd</sup> April 2022.

The application did not comply with the criteria set out in Rule 39(2) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended and section 43(2)(b) of the *Tribunals (Scotland) Act 2014*, in respect that it was not timeous and the Respondent provided no evidence that he had copied the application to the Applicant.

In the absence of any response from the Respondent to the Tribunal's request, the Tribunal considered that the application for review was wholly without merit in terms of Rule 39(3) and refused it.

### **Application for Review at the Request of the Respondent**

By e-mail from the Respondent to the Tribunal dated 11<sup>th</sup> May 2022, the Respondent again requested the Tribunal to review its decision. The Respondent provided evidence that he had copied the application to the Applicant, and sought to rely upon Rule 16A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended to extend the time for complying with Rule 39(2)(b) upon the basis that he had not received the Tribunal's decision and statement of reasons of 18<sup>th</sup> January 2022 at that time, and only became aware of it shortly prior to his previous application for review.

The Respondent stated that he had paid the sum of £1,200.00 which the Applicant stated remained unpaid on 18<sup>th</sup> January 2022 at the Case Management Discussion on that date.

The Tribunal notified the parties in writing setting a time limit for any response to the application by the Applicant and seeking her views. Both parties provided further information and submissions to the Tribunal, and the Tribunal considered that a hearing was necessary.

A Hearing on the application for review was held at 10.00 on 14<sup>th</sup> June 2022 by Tele-Conference. Both parties participated, and neither was represented.

The Respondent argued that he has made a payment on 4<sup>th</sup> January 2022 of £1,200. That was in respect of the outstanding rent due from 1<sup>st</sup> September 2021. As that had been paid, the Tribunal ought not to have granted an order for payment of £1,200 on 18<sup>th</sup> January 2022.

The Tribunal enquired about the arrears of rent as at the date of its order. It appeared that the Respondent had not made payment of the January rental due of £1,200 for January 2022 in advance on 1<sup>st</sup> January 2022 in terms of clause 8 of the private residential tenancy agreement.

The Respondent argued that this sum was not due as at 18<sup>th</sup> January 2022, as he subsequently left the Property on 29<sup>th</sup> January 2022 and paid the remaining rental due to that date thereafter. He accepted that albeit the notice to leave served upon him specified 29<sup>th</sup> January 2022 as the date when he should leave the Property, he did not confirm to the Applicant that he would leave on that date until 24<sup>th</sup> January 2022, some six days after the Tribunal's decision.

The Applicant invited the Tribunal to refuse the application for review. She argued that as at 18<sup>th</sup> January 2022, the Respondent was in arrears of rent of £1,200. Even if the Respondent's analysis was correct and she should have attributed the payment of £1,200 made on 4<sup>th</sup> January 2022 to the rent due on 1<sup>st</sup> September 2021 which remained unpaid, then the Respondent had failed to pay the rental for January 2022 of £1,200 which fell due on 1<sup>st</sup> January 2022.

## **Reasons for Decision**

The Respondent applied to the Tribunal for review of its decision of 18<sup>th</sup> January 2022 by e-mail dated 11<sup>th</sup> May 2022. The application set out why the Respondent considered a review of the decision was necessary.

Rule 39(1) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended provides that the Tribunal may at the request of a party review a decision made by it where it is necessary in the interests of justice to do so.

The application did comply with the criteria set out in Rule 39(2) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended and section 43(2)(b) of the *Tribunals (Scotland) Act 2014*.

The Tribunal did not consider that the Respondent's reasons for review had merit. Even if the Respondent's analysis was correct and the Applicant should have attributed the payment of £1,200 made on 4<sup>th</sup> January 2022 to the rent due on 1<sup>st</sup> September 2021 which remained unpaid, then the Respondent had failed to pay the rental for January 2022 of £1,200 which fell due on 1<sup>st</sup> January 2022.

Clause 8 of the private residential tenancy agreement provides that monthly rental of £1,200 is payable in advance of the 1<sup>st</sup> of that month. Accordingly, the Respondent ought to have paid the sum of £1,200 rent for the month of January 2022 to the Applicant on 1<sup>st</sup> January 2022. He accepted that he did not.

The fact that the Respondent subsequently quit the Property on 29<sup>th</sup> January 2022, and subsequent to then made payment in full of all arrears does not appear to the Tribunal to be a good reason for it to review the decision it made on 18<sup>th</sup> January 2022. On that date, the Applicant sought an order for the sum of £1,200 in arrears of rent which at that time remained due and unpaid. The Tribunal granted that order on that basis, which decision was correct at the time it was made.

## **Decision**

For the foregoing reasons, the Tribunal refused the application.

Neil Kinnear

14<sup>th</sup> June 2022

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Legal Member/Chair

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Date