



**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 (“2016 Act”)**

**Chamber Ref:** FTS/HPC/CV/23/2360

**Re:** 26 Caroline Street, Elgin, Moray, IV30 4DR  
 (“the Property”)

**Parties:**

**Mr David Breerton and Mrs Dawn Breerton, both of 15 Councillors Walk, Forres, IV36 1HA  
 (“the Applicants”)**

**Mr Zbigniew Marek Wieczorek, of 26 Caroline Street, Elgin, Moray, IV30 4DR  
 (“the Respondent”)**

**Tribunal Members:**

**Pamela Woodman (Legal Member) and Helen Barclay (Ordinary Member)**

**Present:**

The case management discussion in relation to case reference FTS/HPC/CV/23/2360 took place at 10am on 12 October 2023 by teleconference call (“**the CMD**”). Mrs Breerton, one of the Applicants, was present at the CMD. The Respondent was neither present nor represented at the CMD. The clerk to the Tribunal was Leigh Morrissey. This case was conjoined with the case with reference FTS/HPC/EV/23/2359.

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment for £2,271.02 be granted against the Respondent.**

**BACKGROUND**

1. An application had been made to the Tribunal under section 71(1) of the 2016 Act and in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The

First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended. More specifically, the application was made in terms of rule 111 (*Application for civil proceedings in relation to a private residential tenancy*) of the HPC Rules.

2. The order sought from the Tribunal was an order for payment in the sum of £2,271.02 against the Respondent.
3. The application form dated 17 July 2023 was accompanied by copies of various documents, including:
  - a. the private residential tenancy agreement between the Applicants and the Respondent dated 31 August 2019 (“**Tenancy Agreement**”).
  - b. a record of rent arrears up to 5 July 2023 which showed arrears of rent of £2,271.02.
4. A notice of acceptance of the application was issued dated 7 August 2023 under rule 9 of the HPC Rules, confirming that the application paperwork had been received on 18 July 2023.
5. The Tribunal had been provided with a certificate of intimation issued by James B. Booth (sheriff officer) of Walker Love, which certified that the paperwork from the Tribunal (including notification of the date, time and dial-in details for the CMD) had been served on the Respondent on 1 September 2023 personally at the Property.
6. The Respondent had not provided written representations in advance of the CMD.
7. Further documentation was provided by the Applicants by e-mail to the Tribunal’s administration team on 1, 3 and 9 October 2023. The clerk confirmed that this had been crossed over to the Respondent by post on 9 October 2023. This documentation included an updated rent schedule.
8. The Tribunal noted that the Applicants were the registered landlords of the Property.
9. The Tribunal also noted that the Applicants were recorded as the proprietors of the Property.
10. This decision arises out of the CMD.

#### **PROCEEDINGS, NAMELY THE CMD**

11. As a preliminary issue, the Legal Member explained that, because the updated rent schedule (seeking to amend the amount of rent arrears considered and claimed) had been received less than 14 days in advance of the CMD and less than 14 days’ notice of it had been given to the Respondent, the sum applied for could not be amended (in terms of rule 14A of the HPC Rules) for the purposes of this CMD. However, that was not to say that any arrears incurred after 5 July 2023 could not

be claimed by the Applicants; it simply meant that they would not be considered during the CMD today.

12. Mrs Breerton explained that she understood that the Respondent had been in receipt of universal credit in May 2023 but had not made any payment of rent that month. She noted that £478.98, which she understood to be paid to the Respondent as part of the universal credit, had been paid in June, August and September 2023 in respect of part of the monthly rent due (due at a rate of £550 per calendar month). She said that she had been told that the Respondent had been working in July 2023 and so it was possible that he did not receive universal credit that month but no payment of rent was made that month at all if he was working.
13. Mrs Breerton confirmed that the Respondent had been a tenant of the Property since September 2019 and had paid rent regularly until March 2023. She noted that the Respondent had had other people staying in the Property (which had not been authorised or permitted by the Applicants) and that she had been told that those people had been paying a “rent” to the Respondent but the Respondent had not paid any, or the full amount of, rent since March 2023.

#### **FINDING IN FACT**

14. The Tenancy Agreement stated that:
  - a. The start date of the tenancy was 5 September 2019;
  - b. Rent was payable in advance at a rate of £550 per calendar month;
  - c. Payments of rent were due to be paid on or before the 5<sup>th</sup> of the month;
  - d. No rent deposit was payable; and
  - e. Notices to be served under the Tenancy Agreement were to be served using hard copy by personal delivery or recorded delivery.
15. The Tribunal was satisfied, on the balance of probabilities, that (as at the date of submitting the application (17 July 2023)), the Respondent was in arrears in respect of rent in an amount of £2,271.02 and that (as at the date of the CMD) he was still in arrears for at least £2,271.02.

#### **REASON FOR DECISION**

16. The Tribunal was satisfied, on the balance of probabilities, that there were rent arrears of £2,271.02 as at 5 July 2023 and that that amount was payable by the Respondent to the Applicants under the Tenancy Agreement.

#### **DECISION**

17. The Tribunal granted the application for a payment order in an amount of £2,271.02 (in respect of the rent arrears as at 5 July 2023).
18. Nothing in this decision prohibits the Applicants from seeking to recover any arrears of rent in respect of the period from and after 6 July 2023.

## Right of Appeal

In terms of Section 46 of the Tribunals (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.

**P. Woodman**

*12 October 2023*

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Chair

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Date