



**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 (“the 2016 Act”) and Rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)**

**Chamber Ref: FTS/HPC/CV/23/0935**

**Re: Property at 40 Millhall Court, Airdrie, North Lanarkshire, ML6 7GE (“the Property”)**

**Parties:**

**Miss Ifeyinwa (Ify) Onwuazor, 28 Todds Walk, Andover Road, London, N7 7RB (“the Applicant”)**

**Mr William McLaughlin, 274 Cairntoul Court, Cumbernauld, G68 9JT (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment by the Respondent in the sum of £2,997 should be made in favour of the Applicant.**

**Background**

1. The application submitted on 22 March 2023 sought a payment order against the Respondent in respect of further rent arrears arising in terms of a Private Residential Tenancy between the parties in respect of the Property, commencing on 18 May 2019. The monthly rental was £350. A previous payment order had been granted by a differently constituted Tribunal under a separate case reference FTS/HPC/CV/23/0935 on 9 February 2023 in the sum of £6,224. The further rent arrears which had accrued at the time of this application being submitted amounted to £1,750 and it was stated in the application that rent arrears were continuing to accrue as the Respondent had

not yet vacated the Property. Supporting documentation was submitted with the application, including a copy of the tenancy agreement, a rent statement and the previous Tribunal decision.

2. Following initial procedure, the application was accepted by a Legal Member of the Tribunal acting with delegated powers from the Chamber President who issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations on 12 April 2023. Notification of the application was made to the Respondent and the date, time and arrangements for a Case Management Discussion (“CMD”) were intimated to both parties, advising of the date by which any written representations should be lodged. Said notification was served on the Respondent by Sheriff Officer on 19 June 2023. No written representations were lodged by the Respondent prior to the CMD.

### **Case Management Discussion – 25 July 2023**

1. The Case Management Discussion (“CMD”) took place by telephone conference call on 25 July 2023 at 2pm and was attended by the Applicant. The commencement of the CMD was delayed for around 5 minutes to allow the Respondent to join late but he did not do so.
2. The Legal Member made introductory comments and explained the purpose of the CMD. The Applicant explained the background to the application and that, despite the Respondent having stated during the CMD in respect of her previous application for a payment order on 9 February 2023 that he would vacate shortly thereafter, he did not remove his belongings from the Property or return the keys to the Applicant’s letting agents until around 18 June 2023. Accordingly, this application is to recover the further rent arrears which have accrued meantime, between the period covered in terms of the previous payment order and the Respondent eventually vacating the Property. The Applicant advised that the arrears amounted to £9,024 as at 18 June 2023. It was noted by the Legal Member that the balance of the rent arrears now sought is accordingly £2,800. The Applicant indicated that she also wished to recover from the Respondent further costs incurred by her since the Respondent vacated, including cleaning costs of £400 and for rubbish removal of £105. The Applicant explained that the Respondent had confirmed that he would clean the Property prior to handing back the keys but had failed to do so. She also had to arrange for the removal of 36 bags of rubbish from the Property by way of special uplift. Finally, the Applicant advised that her letting agents are in the process of arranging for the return of the tenancy deposit to her. This will cover some of the additional costs she now claims, but not all, as the deposit was only £350.
3. The Legal Member noted that the Applicant had sent in email correspondence to the Tribunal Administration on 17 July 2023, advising of the increased amount sought by way of the payment order, together with information advising of the date the Respondent had vacated the Property and evidence of the cleaning and uplift costs incurred. It was noted that this information had been submitted to the Tribunal 7 days before the CMD but had only been intimated

by the Tribunal to the Respondent by post in recent days and is unlikely to have been received by him, given that the Tribunal only has the tenancy address for him and he is no longer there. The Legal Member advised the Applicant of the 14 day notice period required for a party to amend their application, including the sum claimed, and that the party must intimate the amendment to both the Tribunal and the other party, all in terms of Rule 14A of the Regulations. The Applicant indicated that she had not been aware of the 14 day notice period in order to do this, nor the requirement to intimate the amendment to the Respondent. The Applicant advised that she does not have a forwarding address for the Respondent but has already instructed tracing agents in this regard. The Legal Member explained that, in the circumstances and, particularly as it cannot be established that the Respondent has had notice of the Applicant's wish to amend her claim and seek a higher sum, that the Applicant had two options. The first was to proceed to seek a payment order at the CMD today but restricted to the original sum claimed in respect of the application ie. £1,750. The second was to ask for the CMD to be continued to a later date, to be arranged, to allow the Applicant to apply for amendment to her application, to obtain and intimate to the Tribunal a forwarding address for the Respondent and thereafter for the amendment and details of the new CMD to be intimated to the Respondent. There was also some discussion regarding the process of applying for advertisement of notifications on the Tribunal website in the event that the whereabouts of parties to Tribunal proceedings cannot be established. The Applicant indicated that she would prefer the second option and for the application to be continued to a further CMD. The Legal Member indicated that this would be done and directed the Applicant to intimate to the Tribunal Administration if she manages to trace the Respondent and, if so, to provide his forwarding address and if not, if she wishes to apply for advertisement on the Tribunal website.

4. The CMD was adjourned to allow the Applicant to amend her application and seek to trace the Respondent and thereafter for the amendment to the application and notification of the further CMD to be intimated timeously to the Respondent.
5. Following the CMD, the Applicant emailed the Tribunal Administration on 2 August 2023 attaching her Sheriff Officer's report which confirmed that they had traced the Respondent to 274 Cairntoul Court, Cumbernauld, G68 9JT. On 7 August 2023, the Applicant sent a further email, requesting to amend her application to seek an increased payment order in the sum of £2,997. She provided a breakdown of that figure and vouching in respect of the Sheriff Officer tracing fee of £42 which is included in her increased claim. The Applicant copied in the Respondent to her email of 7 August to the Tribunal. The further CMD was subsequently scheduled to take place on 24 October 2023 at 10am. The Tribunal Administration notified the Respondent of the details of the further CMD by post at his new address, as above, on 19 September 2023. No representations nor other contact from the Respondent was received by the Tribunal prior to the CMD.

1. The further CMD took place by telephone conference call on 24 October 2023 at 10am and was again attended only by the Applicant. The commencement of the CMD was delayed for around 5 minutes to allow the Respondent to join late but he did not do so.
2. Following introductory comments by the Legal Member, the Applicant was asked to address her application and the amendment that she wished to make to it. Reference was made to her having traced the Respondent to his new address shortly after the previous CMD and to the detail of the amendment she wished to make to her application. It was noted that the application had been properly and timeously made by the Applicant and also intimated directly to the Respondent by the Applicant by email on 7 August 2023. Accordingly, the Legal Member was satisfied that the terms of Rule 14A of the Regulations had been met and confirmed that the application was now amended to increase the sum sought from £1,750 to £2,997.
3. The Applicant summarised the background to the application and confirmed that the breakdown of the sum now sought is £2,800 in respect of further rent arrears incurred by the Respondent between the date covered by her previous Tribunal Order in respect of rent arrears and the Respondent eventually vacating the Property on or around 18 June 2023; £400 in respect of cleaning costs due to the condition in which the respondent had left the Property when he vacated; £105 in respect of rubbish uplift costs incurred by the Applicant (36 bags of rubbish) and £42 in respect of the tracing fee, as the Respondent had failed to provide his forwarding address to the Applicant on vacating the Property. The Applicant confirmed that she had received back the full tenancy deposit of £350 from the tenancy deposit scheme and had deducted this sum from the total further costs incurred of £3,347, leaving the balance owing as £2,997. Reference was made to the vouching lodged by the Applicant in respect of the additional rent arrears and other costs incurred. The Applicant confirmed that she had not received any communication or payment from the Respondent meantime and nor has she yet commenced the enforcement of the previous Payment Order from the Tribunal.

## **Findings in Fact**

1. The Applicant is the owner and the landlord of the Property.
2. The Respondent is the former tenant of the Property by virtue of a Private Residential Tenancy which commenced on 18 May 2019.
3. The Respondent vacated the Property on or around 18 June 2023.
4. The rent due in respect of the tenancy was £350 per calendar month.
5. The Applicant was granted a previous Order by the Tribunal in respect of a separate application against the Respondent on 9 February 2023 in the sum of £6,224 in respect of rent arrears.

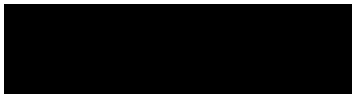
6. Further rent arrears amounting to £2,800 were incurred between the date covered in terms of the previous Order and the date the Respondent vacated the Property.
7. Following the Respondent vacating the Property, the Applicant has incurred further costs of £400 in respect of cleaning costs, £105 in respect of rubbish uplift and £42 in respect of tracing costs to ascertain the Respondent's forwarding address.
8. The Applicant received the tenancy deposit of £350 back via the tenancy deposit scheme and has deducted same from the sums claimed.
9. The balance due and resting owing by the Respondent amounts to £2,997.
10. The last payment by the Respondent towards rent was £101 in April 2022 and no payments have been made to the Applicant since.
11. The Respondent has been called upon to make payment but has failed to do so.
12. The Respondent has not submitted any written representations, nor sought time to pay, in respect of this application.
13. The Respondent did not attend either of the CMDs.

### **Reasons for Decision**

1. The Tribunal considered all of the background papers, including the application and supporting documentation and the oral submissions made by the Applicant at the CMD. The Tribunal noted that no representations had been made by the Respondent and that he did not attend either of the CMDs, having been properly and timeously notified of same. The Tribunal considered that there was nothing to contradict the information from the Applicant and therefore no requirement to continue the application to an Evidential Hearing. The Tribunal was satisfied that, in the circumstances, a payment order in terms of the application could properly be made at the CMD.
2. The Tribunal was satisfied from the information before it that the application by the Applicant to increase the sum sought had been made timeously and had been notified to the Respondent in terms of Rule 14A of the Regulations. Accordingly, the Tribunal permitted said amendment to be made.
3. The Tribunal was satisfied that the sum of £2,997 in unpaid rent and other costs incurred is due and resting owing by the Respondent in terms of this amended application and that an order for payment in that sum should accordingly be made.

## 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.



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Legal Member/Chair

24 October 2023

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Date