



**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) 2016 Act**

**Chamber Ref: FTS/HPC/CV/23/2508**

**Re: Property at 3 Forthview Terrace, Wallyford, EH21 8LH (“the Property”)**

**Parties:**

**Strathearn (Edinburgh) Ltd, 3 Salters Road, Wallyford, EH21 8JY (“the Applicant”)**

**George Mclean, Samantha Mclean, 3 Forthview Terrace, Wallyford, East Lothian, EH21 8LH (“the Respondents”)**

**Tribunal Members:**

**Joel Conn (Legal Member) and Helen Barclay (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that payment in the sum of £3,778.04 be granted against the Respondents.**

- 1) This was an application by the Applicant for civil proceedings in relation to a private residential tenancy in terms of rule 111 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”), namely an order for payment of rent arrears. The tenancy in question was a Private Residential Tenancy (“PRT”) by the Applicant to the Respondents commencing on 24 February 2020.
- 2) The application was dated 26 July 2023 and lodged with the Tribunal on that date. The application sought payment of arrears of £1,108.14 “and any additional arrears which accumulate throughout this application process”. As explained below, this matter called before us for a continued case management discussion (“CMD”) and therefore we had the benefit of further papers provided to the Tribunal after the lodging of the application. These further papers included a rent statement correct to 5 October 2023 showing that arrears had been present on the account since 24 January 2023, though had fluctuated due to irregular

monthly payments, some short payments, and some monthly payments being higher than £895 and thus reducing the arrears. The sum due as at 26 July 2023 was shown to be £2,003.04 being the arrears of £1,108.14 due to 23 July 2023 plus a further month of rent of £895 that fell due on 24 July 2023. The lease for the Tenancy accompanied the application and it detailed a rental payment of £895 payable in advance on the 24<sup>th</sup> of each month.

## **The Hearing**

- 3) The matter called for a continued CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 17 January 2024 at 10:00. We were addressed by Sarah Strachan, Senior Portfolio Manager, Umega Ltd, on behalf of the Applicant. There was no appearance from the Respondents.
- 4) The Respondents had been represented by Haddington CAB at the initial CMD of 13 October 2023, when the application had been continued (along with a conjoined application on eviction under reference EV/23/2507) for advice to be provided. The Respondents' agent had been advised of the date of the continued CMD on 22 November 2023 though subsequently withdrew from acting on 13 December 2023.
- 5) We were informed by the clerk that no contact had been received from the Respondents (or on their behalf) with the Tribunal since their agent's withdrawal. The Applicant's agent said that no communication had been received from the Respondents or the CAB since the initial CMD (excluding the communication about the CAB withdrawing from acting). The Applicant's agent stated that neighbours had reported that the Respondents had abandoned the Property but the Applicant had not yet confirmed if this was the case.
- 6) We considered that the Respondents had received clear intimation of the continued CMD through their agents at the time, and it was reasonable of us to assume that the date was known to them. In the absence of any attempt by the Respondents to make contact with the Tribunal or the Applicant's agent themselves, or appoint new agents, and having not commenced the continued CMD until around 10:05, we were satisfied to consider the application in the Respondents' absence. In any case, no attempt was made by either of the Respondents (nor anyone on their behalf) to dial in late to the continued CMD.
- 7) At the continued CMD, the Applicant's agent confirmed that the application for an order for payment of rent arrears was still insisted upon and at the increased arrears of £3,778.04 in respect of rent due through to 23 January 2024. A rent statement covering the period to 5 October 2023 was with the application papers considered at the initial CMD allowing us clarity on how the figure of £3,778.04 was constituted. The rent statement showed that the last payment received against rent was £900 on 29 September 2023, which cleared the rent due for 24 September 2023 and made a £5 reduction in the arrears. Arrears at 5 October 2023 were £1,093.04, to which further unpaid rent of £895 a month on 24 October, 24 November and 24 December 2023 has now been added, to bring

the arrears to £3,778.04. This was the sum due in rent through to 23 January 2024.

- 8) No motion was made for expenses or for interest.

### **Findings in Fact**

- 9) On or about 22 and 24 February 2020 the Applicant let the Property as a Private Residential Tenancy to the Respondents under a lease with commencement on 24 February 2020 (“the Tenancy”).
- 10) In terms of clause 8 of the Tenancy Agreement, the Respondents required to pay rent of £895 a month in advance on the 24<sup>th</sup> day of each month.
- 11) On 26 July 2023, the Applicant raised proceedings against the Respondents for an order for payment of the rent arrears of £1,108.14 “and any additional arrears which accumulate throughout this application process”.
- 12) £1,108.14 was due in arrears to 23 July 2023, being arrears accumulated through missed payments and shortfalls in rent (less some payments against arrears) from 24 January 2023.
- 13) The arrears due as at 17 January 2024 are £3,778.04 in respect of rent due to 23 January 2024.
- 14) The Respondents provided no evidence of payment of any part of the said unpaid rent of £3,778.04 as at 17 January 2024.

### **Reasons for Decision**

- 15) The application was in terms of rule 111, being an order for civil proceedings in relation to a PRT. We were satisfied, on the basis of the application and supporting papers, that rent arrears of £3,778.04 were due for the period to 23 January 2024 and remained outstanding as of today.
- 16) No defence was made by the Respondents to any part of the application. (There was no appearance or defence to the conjoined application for eviction either.)
- 17) The application, supplemented by the updated rent arrears information, clearly set out the sums sought and we were satisfied that the necessary level of evidence for these civil proceedings had been provided.
- 18) The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. We were thus satisfied to make a decision at the CMD to award the sum of £3,778.04 against the Respondents, being an order restricted to sums due under the Tenancy in regard to rent arrears up to 23 January 2024.

## **Decision**

- 19) In all the circumstances, we were satisfied to make the decision to grant an order against the Respondents for payment of £3,778.04.

## **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.



**17 January 2024**

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**Legal Member/Chair**

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**Date**