



**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**

**Chamber Ref: FTS/HPC/CV/23/3674**

**Re: Property at 9 Main Street East, Menstrie, FK11 7BH (“the Property”)**

**Parties:**

**Jennifer Campbell Gilvear, 59 Menstrie Road, Tullibody, Clackmannanshire (“the Applicant”)**

**Mr Michael Nesbitt, Ms Rebecca Ward, 9 Main Street East, Menstrie, FK11 7BH (“the Respondent”)**

**Tribunal Members:**

**Lesley-Anne Mulholland (Legal Member) and Jane Heppenstall (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an Order for Payment from the Respondents in favour of the Applicant in the sum of £10,160.**

**Introduction**

1. This is an application under Section 71 of the Private Housing (Scotland) Act 2016 for a Payment Order.
2. The Applicant is the heritable owner. The Respondents are the Tenants. They entered into a Private Tenancy Agreement on 4 June 2021. The Tenancy Agreement specifies that £480 is due in respect of rent each calendar month, payable in advance.
3. The Applicant asserts that the Respondent has accrued rent arrears in the sum of £10,160. A schedule has been produced to confirm.

4. A two-member Case Management Discussion (CMD) took place at 14.00hrs on 30 January 2024 by teleconference. Note of that discussion was issued requiring the Parties to provide information to assist the Tribunal and the discussion was adjourned until 26 April 2024.
5. A two-member Case Management Discussion (CMD) took place at 14.00hrs on 26 April 2024 by teleconference. The Applicant's Representative, Miss Wooley joined the discussion.
6. The Respondents failed to appear. We decided to continue the discussion in their absence after satisfying ourselves that the papers had been properly served on them and that they were notified of today's CMD. We had regard to the overriding objective.
7. At the date of the Case Management Discussion, rent arrears stood at £10,160.
8. As can be seen from the Case Management Discussion Note of 30 January 2024, the Respondents alleged that despite entering into a Private Residential Tenancy Agreement for the property for a monthly rent of £480, that they paid that amount for some time and thereafter agreed with the agent/sister of the owner Applicant that they no longer required to pay any rent.
9. The Applicant has produced information from the Local Authority to show that she is the registered landlord for the property.
10. Directions were issued for the Respondent to produce information to corroborate their claim and they have failed to respond.
11. Miss Wooley informed us that she had gone back to the Applicant with the information provided by the Respondents at the last Discussion. The Applicant had given authority to her sister Cheryl to act as her agent and a mandate has been produced to that effect. The Applicant has checked with her sister who denies that any such arrangement was made.
12. The Respondents last made a payment towards rent on 29 September 2022 and a significant amount of arrears have been accrued since then. The Applicant is a student and dependent on the income from the tenancy. The arrears are far in excess of six months' rent.
13. Having considered all of the information, individually and together, we were satisfied that the Applicant is entitled to the payment of £480 per calendar month and that arrears have accrued of £10,160. Ground 12A is satisfied.
14. As stated before, the Respondents have failed to respond to the Directions of 30 January 2024. They did not appear today. They have failed to demonstrate that the Applicant's agent changed the agreement. We prefer to rely upon the information provided by Miss Wooley that Cheryl Muir (the Agent) and/or the Applicant never reached such an agreement. The Respondents have failed to

provide a sufficiency of evidence to show why the Applicant would have agreed to such a course of action as a commercial landlord dependent upon the income from the property. In these circumstances, it is more probable than not that such an agreement was not reached.

15. Accordingly, we decided to grant a Payment Order.

### **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.**

## **LA Mullholland**

26 April 2024

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**Legal Member/Chair**

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**Date**