



**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/23/3909**

**Re: Property at Flat 3, 4 Corstorphine High Street, Edinburgh, EH12 7ST (“the Property”)**

**Parties:**

**Wendi Webber, Oliver Webber, 28 Valliere Road, London, NW10 6AS (“the Applicants”)**

**Lori Laing, formerly of Flat 3, 4 Corstorphine High Street, Edinburgh, EH12 7ST and whose current whereabouts are unknown (“the Respondent”)**

**Tribunal Members:**

**Joel Conn (Legal Member)**

**Decision (without a hearing)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**Background**

1. This is an application by the Applicants 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 Applicants to the Respondent commencing on 14 March 2023.
2. The application was dated 2 November 2023 and lodged with the Tribunal on 6 November 2023. The application sought payment of arrears of £2,773.36 as at 1 November 2023 but within the papers was subsequent correspondence and an updated rent statement showing further payments and further alleged unpaid rent. The final application sought total arrears £4,518.26 as at 1 January 2024.

3. Further, prior to the case management discussion (“CMD”), on 21 March 2024 the Applicants’ agent lodged by email an updated rent statement and a request to amend the sum sought, now to £5,248.59 said to be all rent due under the Tenancy to a termination date of 27 February 2024. (The issue as to the termination date of the Tenancy became the principal issue for discussion at the CMD.)
4. The lease for the Tenancy accompanied the application and it detailed a rental payment of £825 payable in advance on the 1<sup>st</sup> of each month.

### **The Hearing and further procedure**

5. The matter called for a CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 2 April 2024 at 14:00. I was addressed by Michelle Dakers, Office Manager, and Michael Main, Head of Operations, both of ACE Letting on behalf of the Applicants. (Ms Dakers led the submissions.) There was no appearance from the Respondent.
6. I was informed by the clerk that no contact had been received from the Respondent (or on her behalf) with the Tribunal. Further, the Tribunal’s Sheriff Officer had intimated the papers upon the Respondent at her place of work on 23 February 2024, having determined that she was no longer at the Property. The Applicants’ agents were also satisfied that the Respondent had now left the Property. I considered that the Respondent had received clear intimation of the CMD from Sheriff Officers. Having not commenced the CMD until around 14:05, I was satisfied to consider the application in the Respondent’s absence. In any case, no attempt was made by the Respondent (nor anyone on her behalf) to dial in late to the CMD, nor make any contact with the Tribunal since that time.
7. I was satisfied with the arithmetic in the most recent rent statement provided by the Applicants and that there was no dispute intimated by the Respondent, who had not sought to enter appearance. The application (if the amendment was allowed) was, however, for rent arrears up to 27 February 2024 which presupposed that the Tenancy subsisted to that date. This was not obvious from the application papers, in particular the Sheriff Officer having noted by 23 February 2024 that the Respondent had moved out, and the supporting submissions on the amendment motion which referred to the Respondent emailing on 16 January 2024 to say that she had abandoned the Property. I sought clarification as to the background. Discussion on this matter, and what was known of the Respondent’s occupation up to 27 February 2024, took place at length at the CMD.
8. In particular, at the CMD it was not possible to resolve the issue as to whether the tenancy was terminated under section 48, or section 50, or when it was terminated. The Applicants’ agent did not have any evidence of the Respondent occupying the Property after 11 November 2023 (which was the end of the period of notice under a Notice to Leave issued by the Applicants) but was not satisfied at the CMD to concede that the Tenancy terminated under section 50 as at that date. The Applicants’ agent sought to argue that the termination was not until 27 February 2024 but was unable to explain the legal and/or factual basis for that submission.

9. At the CMD, I also discussed the possible arithmetic of the claim if the Tenancy was held to have terminated on 11 November 2023. My arithmetic was that the arrears to that date were £2,341.62 being:
  - i. Arrears to 31 October 2023: £2,475.00
  - ii. Pro-rated rent for 1 to 11 November 2023: £298.36
  - iii. LESS payments to account (from Universal Credit) of 21 December 2023 of £19.74 and £412The Applicants' agents did not concede this arithmetic at the CMD but noted it for purposes of seeking further instructions.
10. In the circumstances - in the absence of any concession by the Applicants that the Tenancy terminated on 11 November 2023 nor full submissions in support of an alternative later date – I continued the application to a continued CMD but made it clear that, once having sought legal advice, if the Applicants wished to concede that termination was under section 50 of the 2016 and that the date of termination was 11 November 2023 then, subject to any belated engagement from the Respondent, I would consider whether to determine the matter under Rule 18 without the need for a further hearing. In such circumstances, I also requested the Applicants to provide the following additional submissions:
  - i. Whether they sought to amend the address of the Respondent either to a new address or to “whose whereabouts are unknown” and, if so, submissions on the proposed amendment;
  - ii. Whether they accepted my arithmetic that arrears of £2,341.62 were due to 11 November 2023 and, if not, their alternative worked calculation for my consideration;
  - iii. Whether interest was sought on that sum from the date of any order and, if so, at what rate and why; and
  - iv. Whether expenses were sought and, if so, in reference to Rule 40, to specify for what period and the basis for any expenses motion.
11. A continued CMD was set for 11 July 2024 but on 10 June 2024 the Applicants' agent emailed the Tribunal to confirm that:
  - i. It was accepted by the Applicants that the tenancy ended on 11 November 2024;
  - ii. That they sought the address of the Respondent to be amended to “whose whereabouts are unknown”; and
  - iii. The revised arrears balance due was £1,416.62 (that is, the Applicants agreed with my arithmetic of £2,341.62 but had now applied against that sum an uplifted deposit of £925.00).
12. At the initial CMD, no motion was made for expenses or interest. The application was silent on interest. The Applicants have since made no written submissions seeking either.
13. This decision is made on 19 June 2024 under Rule 18 without a hearing as I am satisfied to there being such facts that are not disputed by the parties to allow me to make sufficient findings, and that it is not contrary to the interests of the parties.

## **Findings in Fact**

14. On or about 7 and 8 March 2023 the Applicants let the Property as a Private Residential Tenancy to the Respondent under a lease with commencement on 14 March 2023 ("the Tenancy").
15. In terms of clause 8 of the Tenancy Agreement, the Respondent required to pay rent of £825 a month in advance on the 1st day of each month.
16. The Tenancy terminated on 11 November 2023 in terms of section 50 further to the Applicants serving a Notice of Leave which expired, and the Respondent ceasing to occupy.
17. The Respondent failed to make payments of rent of £825 a month on 1 August, 1 September and 1 October 2023 totalling £2,475.
18. The Respondent failed to make any payment of rent for the period 1 to 11 November 2023.
19. Pro-rated rent for 1 to 11 November 2023 is £298.36.
20. The total arrears as of 11 November 2023 was £2,773.36.
21. Subsequent to the termination of the Tenancy, payments to account from Universal Credit were received of £19.74 and £412.00 on 21 December 2023.
22. The Respondent provided no evidence of payment of any part of the unpaid balance of rent of £2,341.62 for the period to 11 November 2023.
23. The Respondent made payment of a deposit of £925 in regard to the Tenancy, and since the CMD the Applicants have uplifted same and applied it against the outstanding balance of arrears.
24. The balance of arrears outstanding as of 19 June 2023 is £1,416.62.
25. The Respondent received personal intimation of the original CMD on 23 February 2024 at her place of employment and did not provide submissions, nor enter an appearance, in the application.

## **Reasons for Decision**

26. The application was in terms of rule 111, being an order for civil proceedings in relation to a PRT. I was satisfied, on the basis of the application and supporting papers, the discussions at the CMD, and the email concession from the Applicants' agent, that there were rent arrears remaining of £1,416.62. I was satisfied that it all remained outstanding as of today. I was satisfied that the necessary level of evidence for these civil proceedings had been provided for an order at this figure.

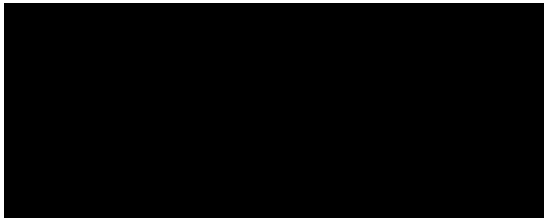
27. I am thus satisfied to make a decision without a hearing under Rule 18 to award the sum of £1,416.62 against the Respondent, being an order for rent arrears under the Tenancy to the termination date of 11 November 2023.

### **Decision**

28. In all the circumstances, I was satisfied to make the decision to grant an order against the Respondent for payment of £1,416.62.

### **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.**



**19 June 2024**

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**Legal Member/Chair**

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**Date**