



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) for civil proceedings in relation to matters associated with a tenancy under the Housing (Scotland) Act 1988 and Rule 70 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules)**

**Chamber Ref: FTS/HPC/CV/23/3145**

**Re: Property at Blaeberry Stables, Changehill, Newmachar, Aberdeenshire, AB21 0RR (“the Property”)**

**Parties:**

**Mr Murray David Forbes and Mrs Shona Forbes, Villa T15, Jumeirah Park, District 9, Street i9, Dubai, 4118, United Arab Emirates (“the Applicants”)**

**DJ Alexander, 20 High Street, Kemnay Aberdeenshire AB51 5NB (the Applicants’ Representative”)**

**Mr Derek Morris, Ormlie Villa, Ormlie Road, Thurso Caithness, KX14 7DW (“the Respondent”)**

**Tribunal Member:**

**Ms Susanne Tanner KC (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined that the Respondent should pay to the Applicants the sum of THREE THOUSAND FIVE HUNDRED AND SEVENTY FOUR POUNDS (£3,574.00) STERLING; and made an Order for Payment in respect of the said sum**

## **Statement of Reasons**

### ***Procedural background***

1. On 8 September 2023, the Applicants' Representative made an Application to the tribunal on behalf of the Applicants seeking payment of rent arrears and late payment charges totalling £3,574 by the Respondent. Supporting evidence was produced, including a short assured tenancy agreement and a rent statement.
2. The tribunal obtained the Title Sheet to the Property which shows the Applicants are the registered proprietors.
3. On 27 November 2023, the Application was accepted for determination.
4. Service on the Respondent of the Application paperwork was by Sheriff Officers on 19 December 2023.
5. In the letter with the Application paperwork, the Respondent was told to submit any written representations by 4 January 2024. He was told that he was required to attend a Case Management Discussion on 8 February 2024 at 1400h by teleconference.
6. The Respondent did not submit any written representations prior to the first Case Management Discussion.

### ***First Case Management Discussion***

7. The first Case Management Discussion took place on 8 February 2024 at 1400h by teleconference. Mrs Young from the Applicant's Representative and the Respondent both attended the Case Management Discussion.
8. During the CMD, the Chair explained the purposes of the CMD. The Respondent accepted that he had received service of the paperwork but said that he had not properly considered it. The tribunal considered the most appropriate further procedure in accordance with the overriding objective on the tribunal to ensure that the proceedings are dealt justly, which includes ensuring, so far as practicable, that the parties are on equal footing procedurally and are able to participate fully in the proceedings. The Applicants' representative had no objection to an adjournment of the CMD.
9. The CMD was adjourned to allow the Respondent to consider the Application paperwork, seek any advice he wishes, and to lodge any written defence to the application and any documents he wishes to rely on.
10. Parties also advised the tribunal that they would continue negotiations between themselves in an attempt to resolve matters.

11. The Respondent gave consent via the tribunal clerk for his email address to be used for tribunal communications, including notification of the new CMD and joining details. It was explained to the parties that the tribunal has the power to make a decision on the Application at the adjourned CMD, which would include making a payment order, if it considers it has the information required to do so and that both parties should prepare for the CMD on that basis. Both parties confirmed that they understood.
12. The CMD was adjourned to a date to be fixed and notified to parties by the tribunal's administration. The Respondent was directed to submit any defence which he wishes to state, no later than 29 February 2024 to the tribunal's administration (email or letter). Both parties were directed to lodge any documents they wish to rely on no later than 7 March 2024 to the tribunal's administration. The Notes on the CMD were sent to the Respondent by email to the address he had given consent to be used for tribunal communications.
13. Notes of the first Case Management Discussion were sent to both parties after the discussion.

### ***Correspondence from Respondent***

14. On 28 February 2024 the Respondent sent an email to the tribunal in which he said that he had been unable to open documents due to working offshore but that he wished to submit a defence to the application. He said that he would be back in Scotland on 7 March 2024 and intended to respond.

### ***Direction***

15. A Direction was issued to parties on 4 March 2024. The Respondent was directed to do the following no later than 19 March 2024:
  1. *Confirm in writing whether the Applicant's application for payment of the sum claimed is opposed, in whole or in part;*
  2. *If the Applicants' application for payment is opposed, lodge a **written defence** to the Application which clearly outlines the **factual and legal basis** of any defence which he wishes to advance;*
  3. *Produce a **List of Documents and a bundle of supporting evidence** upon which he wishes to rely. Each item in the bundle must be page numbered. The **List of Documents** must list all items in the bundle with page numbers;*
  4. *Produce a **List of Witnesses** he wishes to call to give evidence at any future hearing, with contact details.*

5. Provide name and contact details of any **Representative** he wishes to appoint to act on his behalf in relation to the tribunal proceedings, including appearance at the continued CMD on 2 May 2024. The Representative should not be a witness on the witness list. In particular, if the Respondent intends to call his wife, Mrs Ramona Morris, as a witness to give evidence about disputed matters of fact (as stated by the Respondent at the first CMD) she should not act as the Respondent's Representative in the tribunal proceedings. If a Representative is appointed to act on his behalf, the tribunal will correspond with the Representative in place of the Respondent.

16. The Respondent did not comply with the tribunal's Direction.

17. After the date for compliance had passed, the Respondent requested an extension to the date for compliance with the Direction and the date was extended to provide more time.

18. The Respondent sent an email on 19 March 2024. He apologised for his delayed response. He said that he had only just been able to read the documentation sent to him due to recent travel delays. He complained that he could not understand the legal demands and said that he could not afford legal representation but was contemplating legal representation. He said that he might give up but felt pressured into submission. He asked to speak to someone in the tribunal to clarify his concerns.

19. In response, the tribunal's administration replied and said:

*"The case was continued at the CMD for you to state any defence to the application after taking any advice you needed.*

*You missed the date for providing your defence. The tribunal then issued its direction as it has consider[ed] the progress of the application and fairness to both parties.*

*It is your choice whether to seek legal advice. You could seek free housing advice from an organisation such as Shelter or Citizen's Advice. Alternatively, you could write down your defence and send that by the date given in the direction, which has already been extended.*

*The tribunal has to consider the overriding objective to deal with matters justly, which includes dealing with the case without any undue delay.*

*If you no longer wish to defend the application please confirm that in writing to the tribunal."*

### ***Notification and joining instructions for Second Case Management Discussion***

20. On 8 April 2024, the tribunal sent notification and joining instructions for the second Case Management Discussion to both parties. The Respondent received the notification by email to the email address he provided to the tribunal's administration and used to communicate with the tribunal.
21. On 10 April 2024, the Respondent sent an email in which he said that he wanted clarification about what a Case Management Discussion is. He also made a request for postponement of the second Case Management Discussion due to work commitments offshore, as discussed below.

### ***Postponement request from Respondent***

22. On 10 April 2024, in the email referred to above, the Respondent made a request for postponement of the second Case Management Discussion for the reason that his work commitments meant that he could not join on 3 May 2024.
23. On 25 April 2024, the Respondent was requested to provide evidence that he was unavailable due to work commitments. He did not do so.
24. The Applicant's Representative was asked for their views on the postponement request. On 26 April 2024 the Applicant's Representative said that they did not oppose a postponement.
25. The second Case Management Discussion was postponed to 23 May 2024 at 1000h by teleconference.
26. On 26 April 2024, the Respondent was notified of the tribunal's decision to postpone the second Case Management and on 7 May 2024, all joining details for the new date were sent to the email address used by the Respondent to communicate with the tribunal.

### ***Second Case Management Discussion***

27. The Respondent did not attend the second Case Management Discussion. The tribunal Clerk confirmed that the Respondent received notification of the Case Management Discussion in a notification letter which was issued by email on 7 May 2024. It was to the email address that the Respondent has been using to correspond with the tribunal. There has been no contact from the Respondent with the tribunal since that time.
28. The tribunal Chair was satisfied that the Respondent had been given notice and joining instructions for the second CMD in accordance with Rule 24 of the 2017 Rules and had not appeared. The tribunal decided to proceed with the CMD in the absence of the Respondent with the application upon the representations

of the party present and all the material before it, in terms of Rule 29 of the 2017 Rules.

### **Submissions from Applicant's Representative with reference to material**

29. Mrs Young said that the Applicants are seeking a payment order of £3,574. This is due to the Respondent's outstanding rent his tenancy of the Property and late payment charges which were applied to his account.
30. Mrs Young said that the Respondent was a tenant of the Applicants in the Property on a Short assured tenancy with a start date of 1 July 2014. The deposit paid was £1350.00. Initially the rent was paid in 6 monthly instalments. From 2018, the Respondent asked to pay the rent monthly. The rent from 2018 was £1000.00 per month, until the Covid-19 pandemic. Mrs Young said that during the Covid-19 pandemic, the Respondent contacted the agents to say that he had issues with affordability for the rent. The Applicants agreed a repayment holiday agreed. The Applicants, through their representative, tried to assist. However, the Respondent then failed to keep up with the arrangement. There were numerous failures to pay when the agents tried to come to an agreement with the Respondent. That then led to the rent arrears not being paid off. From October 2020, the rent was reduced to £800.00 per month, until it went up to £900 per month from October 2021 until the end of the tenancy.
31. Mrs Young said that the Respondent decided to end the tenancy. The tenancy ended on 30 April 2023.
32. Mrs Young referred to the statement dated 6 November 2023 which shows the rent arrears and payment charges from 1 July 2018 to 26 June 2023, after the deposit money had been applied to the outstanding amount. The statement starts from 1 July 2018, which was the start of an accounting period when the previous company moved onto the new system. There were no arrears at that time.
33. The last payment of rent was received on 4 April 2023. There were rent arrears and late payment charges totalling £4924.00 at the end of the tenancy. The Respondent did not oppose the claim against the deposit. The whole deposit of £1350.00 was paid to the Applicants in respect of rent arrears. That left the outstanding balance claimed in rent arrears and late payment fees. After the deposit was applied to the outstanding balance that left an outstanding amount of £3574.00.
34. The rent arrears at the end of the tenancy, after deducting the deposit were £3166.00.
35. The late payment charges applied to the account were:
  - a. 28 January 2019 was re-credited.

- b. 10 April 2019 - £24
- c. 15 April 2019 - £48
- d. 8 May 2019 – £24
- e. 15 May 2019 - £48 – was re-credited
- f. 9 July 2019 – was re-credited
- g. 8 January 2020 - £24
- h. 8 December 2020 - £24 – was re-credited
- i. 15 December 2020 - £48 – was re-credited
- j. 9 February 2021 - £24 – was re-credited
- k. 8 April 2021 - £24 – was re-credited
- l. 8 July 2021 - £24 – was re-credited.
- m. 15 July 2021 - £48 – was re-credited
- n. 10 January 2022 - £24
- o. 8 April 2022 - £24
- p. 15 April 2022 - £48
- q. 11 July 2022 - £24
- r. 15 July 2022 - £48
- s. 10 October 2022 - £24
- t. 24 March 2022 - £24
- u. 10 April 2022 - £24
- v. 17 April 2022 - £48

36. The total late payment fees which were not re-credited and remain outstanding are £408. The contractual basis for the late payment fees is Clause 2.2 of the Short Assured Tenancy Agreement which provides that the Landlord may charge the tenant a late fee of £20 plus VAT on the date on which the payment fell due and a further late payment fee and a further of £40 plus VAT on the 10<sup>TH</sup> date after the payment fell due.

37. The order sought for rent arrears and late payment fees is £3574.00.

### **Findings-in-Fact**

38. The Applicants are the registered proprietors of the Property.

39. In terms of a Short Assured Tenancy agreement between the parties in respect of the Property, the start date of the tenancy was 1 April 2014.

40. The Respondent paid a deposit of £1350.00 which was held in a tenancy deposit protection scheme.

41. Rent was payable by the Respondent to the Applicants at the rate of £8100.00 per 6 months from 2014 to 2018; £1000.00 per month from 2018 to October 2020; £900.00 per month from October 2020 to October 2021; and £900.00 per month from October 2021 to the end of the tenancy.

42. The end of the tenancy was 30 April 2023.
43. There was an outstanding balance of £4924.00 in respect of rent arrears of £3166.00 and late payment charges of £408.00 at the end of the tenancy on 30 April 2023.
44. The Applicants claimed against the Respondent's deposit of £1350.00 and the full amount was awarded to the Applicants in respect of rent arrears.
45. The total rent arrears and late payment charges outstanding after the deposit of £1350.00 was credited to the balance, are £3574.00.
46. The Respondent has not made any payment towards the rent arrears or late payment charges following the end of the tenancy.
47. The rent arrears and late payment charges as at 23 May 2024 are £3574.00.
48. The Respondent has not lodged any defence to the Application.

### **Findings in fact and law**

49. The Respondent is liable in terms of Clause 2.2 of the tenancy agreement to pay a late fee of £20 plus VAT on the date on which the payment fell due and a further late payment fee and a further of £40 plus VAT on the 10<sup>TH</sup> date after the payment fell due.

### **Discussion**

50. As the tribunal was satisfied that the Respondent owes £3,574.00 to the Applicants by way of rent arrears for the tenancy of the Property in the period to 30 April 2023 and late payment charges for the same period, the tribunal made an Order for Payment of that sum.

### **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.**

**Ms Susanne Tanner K.C.  
Legal Member/Chair**

**23 May 2024**