



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber)**

**Chamber Ref: FTS/HPC/EV/24/1805**

**Re: Property at 24 Cordiners Land, 70 West Port, Edinburgh, EH1 2LF (“the Property”)**

**Parties:**

**Mr David Wright, 7 Denehurst Close, Warrington, England, WA5 2ES (“the Applicant”)**

**Mr Bradley McCathie, Ms Eugenia Barbisan, 24 Cordiners Land, 70 West Port, Edinburgh, EH1 2LF; Via Carlo Cattaneo 4, 31100 Treviso TV, Italy, Italy (“the Respondents”)**

**Tribunal Members:**

**Virgil Crawford (Legal Member) and Melanie Booth (Ordinary Member)**

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

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

**BACKGROUND**

1. On 16<sup>th</sup> January 2023, the Applicant let the Property to the Respondents.
2. Rent is payable at the rate of £960.00 per month.
3. Following the lease being entered into the second named Respondent vacated the premises and now lives elsewhere.
4. Arrears of rent began to accrue. As a result, a notice to leave was served upon the Respondents.

5. A notice in terms of s11 of the Homelessness (Scotland) Act 2011 was intimated to the local authority.
6. The Applicant thereafter raised proceedings for payment of arrears of rent (CV/24/0179) and for an order for eviction (EV/24/1805).
7. As at the date of the proceedings being raised (12 January 2024), arrears of rent amounted to £2,468. As at the date of the case management discussion (12 July 2024), arrears of rent amounted to £8,104.94.
8. The second Respondent lodged written submissions with the Tribunal pointing out she had vacated the premises a significant period of time ago. That is accepted by the Applicant. In the circumstances, the Applicant, prior to the case management discussion, intimated that he was seeking to withdraw the application for a payment order in so far as it was directed against the second named Respondent.

## **THE CASE MANAGEMENT DISCUSSION**

9. The Applicant did not participate personally in the case management discussion but was represented by Mr Gray of Messrs. Gilson Gray LLP. The Respondents did not participate in the case management discussion. The second Respondent, in her written submissions, advised she would not be attending. In relation to the first Respondent, the Tribunal was in receipt of a certificate of intimation by Sheriff Officers confirming that the proceedings had been intimated upon the first Respondent. In the circumstances, the Tribunal was satisfied in terms of Rule 24 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the FTT Regs”) that the respondents had received intimation of the date and time of the Case Management Discussion and considered that it was appropriate to proceed with the Case Management Discussion in the absence of the Respondents in accordance with Rule 29 of the FTT regs;

## **EVICITION**

10. In relation to the application for an eviction order, an updated rent statement had been provided. No submissions had been provided by the first Respondent. No challenge has been intimated in relation to the level of arrears. In the circumstances, the Tribunal was satisfied that there were significant arrears which, on the face of it, would justify an order for eviction.
11. Mr Gray was asked to advise the Tribunal in relation to the personal circumstances of the first Respondent, in so far as known. The Tribunal was advised that he was now 35 years of age (his exact date of birth was provided). The second named Respondent had vacated the premises as far back as February 2023. The first Respondent was the only person residing there now and was the sole tenant.
12. There have been increasing issues in relation to anti-social behaviour since the notice to leave was served upon the Respondents. It appears that the first

Respondent has certain alcohol and other substance dependency issues which may be the cause of the anti-social behaviour.

13. As at January 2024 the first Respondent was in employment in a licensed premises. He has, on certain occasions, been entitled to universal credit but appears to no longer be. He appears to have been entitled to universal credit towards the end of 2023. Two payments of rent were made through the universal credit system, those being in December 2023 and January 2024. No further payments have been received.
14. The first named Respondent has no children. He has no known medical issues. As at 15<sup>th</sup> April 2024, he was still within the Property. The Property has not been adapted in any way for the benefit of the first Respondent or any other member of his household.
15. On the basis of the information available in relation to the level of rent arrears, and in the absence of any information provided by the first Respondent to suggest that it was anything other than reasonable to grant an eviction order, the Tribunal granted an order for eviction.

#### **PAYMENT ORDER**

16. In relation to the request for a payment order there were two aspects to this. Firstly, there was a request for payment of rent arrears. Secondly the Applicant was seeking an additional payment order in the sum of £1,471.15. This was referred to as reasonable costs occasioned in pursuit of arrears of rent.

#### **Rent Arrears**

17. Prior to the case management discussion an application was presented to increase the amount claimed for rent arrears to £8,104.94. An updated rent statement was provided justifying that figure. In the absence of opposition, the Tribunal allowed the amount to be amended and thereafter granted a payment order for rent arrears in that amount.
18. The tenancy agreement provided for interest on late payment at a rate of 8% per annum. The Tribunal granted a payment order with interest at that rate.

#### **Other Reasonable costs**

19. Clause 8 of the tenancy agreement contains a provision as follows:-

***“The Tenant shall be held liable for any further reasonable costs incurred by the Landlord through the tenant’s failure to pay rent on time including, but not limited to, any administrative charges or late fees made by the Landlord’s bank, any expenses incurred by the Landlord in pursuing the tenant for payment of said unpaid rent, legal or otherwise.”***

20. The amount of £1,471.15 claimed was made up of 3 different invoices. These were as follows:-

**“Fee for preparation and submission of Form F application for payment order to the first-tier Tribunal. To include all correspondence, posts, telephones and incidental outlays”**

**Fee: £255.00**  
**VAT £ 51.00**  
**Total £306.00**

**“Restricted interim fee for consideration of tenancy paperwork, correspondence with you on issues with notice to leave, drafting and issuing fresh notices to two tenants, drafting and issuing pre-action letter to two tenants, drafting and issuing instructions to Sheriff Officers to serve papers.”**

**Fee £550.00**  
**VAT £110.00**  
**Total £660.00**

**“Fee for application to the first tier Tribunal for eviction order  
Outlay  
Anticipated disbursement re Sheriff Officer fee**

**Fee £350.00**  
**£ 70.96**  
**Net £420.96**  
**VAT £ 84.19**  
**Total £505.15**

21. The Tribunal refused to grant a payment order for these invoices for the following reasons.
22. The invoices appear to relate to work undertaken with a view to raising proceedings before the Tribunal. In terms of reg 40 of the FTT Regs, as is well known, the Tribunal cannot award expenses of proceedings unless there has been unreasonable behaviour by a party in the conduct of proceedings. Reg 40 is in the following terms:-
- 40.— Expenses**
- (1) The First-tier Tribunal may award expenses as taxed by the Auditor of the Court of Session against a party but only where that party through unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense.**
- (2) Where expenses are awarded under paragraph (1) the amount of the expenses awarded under that paragraph must be the amount of expenses required to cover any unnecessary or unreasonable expense incurred by the party in whose favour the order for expenses is made.**
23. The provision within clause 8 of the tenancy agreement, which is clearly one designed for the benefit of the landlord, appears to be an attempt to “contract out” of the legislative provisions contained within the FTT Regs.
24. While Mr Gray argued that the Applicant was not seeking an award of expenses, rather he was enforcing a contractual obligation due by the

Respondent and arising from the agreement, the Tribunal did not consider that the clause within the lease could be construed in a manner which gave it that effect, certainly in relation to the invoices produced. The work included within the invoices is standard work required by any party applying to the Tribunal and would not normally be a cost which would be charged against an opponent. The Tribunal did not consider it appropriate to make an award for that reason.

25. Separately, the clause within the lease refers to

***“reasonable costs incurred by the Landlord .....*”.**

While the clause within the lease also refers to costs which are

***“..... legal or otherwise.”***

the Tribunal would require to consider whether costs are reasonably incurred. As indicated above, the costs involved here are for routine steps involved in raising proceedings before the Tribunal. Tribunal proceedings are, quite deliberately, free of charge. Tribunal proceedings, by their nature, are designed to enable persons, whether landlords, tenants or others, to conduct proceedings before the Tribunal without fear of an order for expenses or costs being awarded. The Tribunal, quite literally on a daily basis, deals with applications which have been presented by unrepresented parties. The Tribunal proceedings, by their nature, are designed to be straight forward and user friendly. While any person is entitled to instruct a solicitor, or any other advisor, if they so choose, it should not be assumed that the cost of doing so can be passed onto another person. Given the work undertaken by the solicitors in this case is work which is routinely undertaken by unrepresented persons and related directly to preparing for and submitting applications to the Tribunal, the Tribunal does not consider it to be costs which have been reasonably incurred by the Applicant for which the Respondents are liable.

26. Further, three separate fee notes were provided in justification of the additional sum sought. Only one of them related directly to raising proceedings for a payment order. The other two fee notes clearly related to preparatory work for and thereafter presenting an application for an eviction order. The clause within the lease, even assuming the Tribunal had found it to be reasonable for the costs to be incurred, are restricted to steps taken

***“by the landlord in pursuing the tenant for payment of said unpaid rent”***

Only one of the fee notes relates to seeking a payment order for unpaid rent. The other two, as stated, related to eviction proceedings.

27. In the circumstances, and for the reasons stated, the Tribunal refused to grant a payment order for the additional sum of £1,471.15 sought.

## **DECISION**

The Tribunal granted an order against the Respondents for eviction of the Respondents from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 12 of schedule 3 to said Act

Order not to be executed prior to 12 noon on 19 August 2024

### **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.**

# V.Crawford

12 July 2024

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**Legal Member/Chair**

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**Date**