



**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**

**Chamber Ref: FTS/HPC/CV/24/1308**

**Re: Property at Flat 4, 4 Avon Street, Hamilton, ML3 7HU (“the Property”)**

**Parties:**

**Miss Farhana Ghani, 15 Fleurs Avenue, Glasgow, G41 5AR (“the Applicant”)**

**Mr Ighedeosa Febian and Josephine Febian, Flat 4, 4 Avon Street, Hamilton, ML3 7HU (“the Respondents”)**

**Tribunal Members:**

**Shirley Evans (Legal Member) and Gordon Laurie (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment against the Respondents in favour of the Applicant in the sum of SIX THOUSAND TWO HUNDRED AND FIFTEEN POUNDS (£6215) STERLING with interest at 5% per annum. The order for payment will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondents.**

**Background**

- 1. This is an action for rent arrears and interest raised in terms of Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).**
- 2. The application was accompanied by an AT5 dated 25 November 2017 by the Applicant’s sister Farzana Ghani, a signed Tenancy Agreement between Farzana Ghani and the Respondents dated 10 December 2017 and a rent statement.**

3. On 22 April 2024 the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 24 July 2024 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 14 August 2024. The Tribunal advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 26 August 2024. This paperwork was served on the Respondents by Stuart Sinclair, Sheriff Officer, Glasgow on 25 July 2024 and the Executions of Service were received by the Tribunal administration.
5. On 2 August 2024 Mr Fabien emailed the Tribunal to advise he was not opposed to the application but asked for time to pay by instalments.
6. On 8 August 2024 the Tribunal issued a Notice of Direction requesting the Applicant’s solicitor to lodge an up to date rent statement. On 12 August 2024 the Applicant’s solicitor lodged an up to date rent statement showing arrears of £12 875 and seeking to amend the sum sought. On 19 August 2024 the Applicant’s solicitor forwarded an amended rent statement to 1 July 2024 showing arrears of £6215.
7. On 13 August 2024 Mr Fabien sent a photograph of a bank statement showing the last payment to account of £1000 on 16 August 2023.

### **Case Management Discussion**

8. The Tribunal proceeded with a CMD on 26 August 2024 by way of teleconference. Ms Hogg from Stodarts, solicitors appeared for the Applicant. The Applicant’s sister Farzana Ghani and her father Mr Abdul Ghani were in attendance. Initially there no appearance by the Respondents despite the CMD starting 10 minutes late to allow them plenty of time to join the call. The case was heard together with a case for eviction under case reference number FTS/HPC/EV/24/0814.
9. The Tribunal had before it the AT5 dated 25 November 2017 by the Applicant’s sister Farzana Ghani, the signed Tenancy Agreement between Farzana Ghani and the Respondents dated 10 December 2017, the rent statement to 1 July 2024 and Mr Fabien’s emails of 2 and 13 August 2024. The Tribunal considered these documents.
10. Ms Hogg moved the Tribunal to grant an Order for payment of £6125 with interest at the judicial rate of 8%. She explained the Applicant’s sister had

been the original landlord of the Property which had now been taken over by the Applicant. The Respondents had not paid any rent since the notices were served on them in September 2023 and the Respondents were now in arrears of £6125. They had served a pre action letter on 20 October 2023. The Respondents had not made any proposals to pay the arrears.

11. The Tribunal adjourned to consider Ms Hogg's submissions. After the adjournment the Respondents had joined the CMD.
12. The Tribunal explained to the Respondents that Ms Hogg had asked for a payment order for £6215 with interest. Both Respondents accepted they were in arrears of £6215 but added that interest would make it more difficult for them to pay the arrears. Mr Fabien offered to pay £650, being rent of £555 plus £95 per month. The Tribunal noted no payment had been made since 16 August 2023 and enquired how they could now make that payment. Mr Fabien explained he was on Universal Credit, was a full-time student and worked part time. His income fluctuated. Mrs Fabien did not work. They would have to cut back on their spending.
13. In response, Ms Hogg submitted she was concerned the Respondents would not be able to meet that payment. They had made no proposals at all until now. It would take the Respondents five and a half years to pay the arrears at that amount.

### **Findings in Fact**

14. The Applicant's sister Farzana Ghani signed an AT5 on 25 November 2017. The Respondents signed a tenancy agreement headed "Short Assured Tenancy" on 10 December 2017. The tenancy agreement was not signed by the Applicant's sister.
15. In terms of Clause 4 of the tenancy agreement the rent is stated at £540 per month. The rent has increased to £555 per month.
16. The Landlord's interest in the tenancy agreement has been assigned in favour of the Applicant.
17. The Respondents have fallen into rent arrears. The last payment to account was £1000 on 16 August 2023. Arrears to 1 July 2024 are £6125

### **Finding in Fact and in Law**

18. The tenancy between the Applicant and the Respondents is a Private Residential Tenancy in terms of Section 1 of the Private Housing (Tenancies) (Scotland) Act 2016.

### **Reasons for Decision**

19. The Tribunal considered the issues set out in the application together with the documents lodged in support, including the tenancy agreement and the rent statement. Further the Tribunal considered the submissions made by parties.

20. The Tribunal noted the terms of the tenancy agreement and the rent statement which set out how the arrears had arisen. The Applicant had produced evidence of persistent non-payment of rent. The Respondents had not disputed the application. Further the Tribunal was satisfied that 5% interest was a reasonable rate and accordingly allowed interest at the rate of 5% in terms of Rule 41A of the Regulations.

21. Further the Tribunal was satisfied that the sum sought should be increased to £6215 in terms of Rule 14A of the Regulations. The Tribunal was not satisfied the Respondents could afford to pay the rent of £555 per month, not having done so since 16 August 2023, let alone pay an additional £95 per month towards the arrears. The Respondents were in substantial arrears. It was not reasonable to expect the Applicant to wait five and a half years for these arrears to be cleared. The Tribunal accordingly refused the Respondents' request to pay the arrears by instalments. The Tribunal was satisfied on the basis of the documents lodged, together with Ms Hogg's submissions that an order for payment in favour of the Applicant be granted with interest at 5%.

22. Although not affecting the Order for payment the Tribunal was satisfied that the tenancy agreement was in fact and in law of Private Residential Tenancy Agreement. Reference is made to the decision under the cojoined action for eviction under case reference FTS/HPC/EV/24/0814.

### **Decision**

23. The Tribunal granted an order for payment of £6215 with interest at 5% per annum from the date of Order in favour of the Applicant.

## **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.

# Shirley Evans

**26 August 2024**

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**Legal Member**

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**Date**