



**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/24/0892**

**Re: Property at Muirhall Cottage, Meikle Earnock Road, Hamilton, ML3 8RN (“the Property”)**

**Parties:**

**Clyde Mitchell, 36 Grayling Mead, Romsey, SO51 7RU (“the Applicant”)**

**Miss Natalie McGee, Muirhall Cottage, Meikle Earnock Road, Hamilton, ML3 8RN (“the Respondent”)**

**Tribunal Members:**

**Sarah O'Neill (Legal Member) and Gordon Laurie (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment by the Respondent of the sum of £6843.02 should be granted in favour of the Applicant.**

**Background**

1. On 21 February 2024, the Applicant’s solicitor, Mr Duncan Hamilton of ELP Arbuthnott McClanachan solicitors, on behalf of the Applicant, submitted an application seeking a payment order in terms of rule 111 (Application for civil proceedings in relation to a private residential tenancy) of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”). The Applicant sought an order for payment of £6843.02 in respect of rent arrears which were alleged to be due by the Respondent to the Applicant.
2. Attached to the application form were:

- (i) Copy private residential tenancy agreement between the parties, which commenced on 15 December 2017.
  - (ii) Copy rent statement showing arrears of rent due by the Respondent to be £6843.02 as at February 2024.
  - (iii) Copies of pre-action requirements letters sent by the Applicant's solicitor to the Respondent on 20 December 2022 and 1 September, 6 October and 6 November all 2023.
3. Further information was requested from the Applicant by the tribunal administration on 13 May 2024, and a response was received from the Applicant's solicitor on 27 May 2024.
4. The application was accepted on 20 June 2024.
5. Notice of the case management discussion (CMD) scheduled for 8 October 2024, together with the application papers and guidance notes, was served on the Respondent by sheriff officer on behalf of the tribunal on 29 August 2024. The Respondent was invited to submit written representations by 18 September 2024.
6. A further written submission was received from the Applicant's solicitor on behalf of the Applicant on 1 October 2024. This included an updated rent statement showing the rent outstanding as at 10 September 2024 to be £7758.54.
7. No written representations or time to pay application were received from the Respondent prior to the CMD.

### **The CMD**

8. A CMD was held by teleconference call on 8 October 2024 to consider this application and the accompanying eviction application. The Applicant was represented by his solicitor, Mr Hamilton. The Respondent was not present or represented on the teleconference call. The tribunal delayed the start of the CMD by 10 minutes, in case the Respondent had been detained. She did not attend the teleconference call, however, and no telephone calls, messages or emails had been received from her.
9. The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date and time of a CMD had been duly complied with. The tribunal therefore proceeded with the CMD in the absence of the Respondent.

## **The Applicant's submissions**

10. Mr Hamilton asked the tribunal to make a payment order against the Respondent in respect of the arrears outstanding as at the date of the CMD. The most recent rent statement which he had submitted to the tribunal on 1 October 2024 showed that the outstanding arrears were £7758.54 as at 10 September 2024. The Respondent had been in rent arrears since November 2021. She was in receipt of housing benefit but this did not cover her full rent, and the arrears had been gradually increasing over time without being addressed by the Respondent.
11. Mr Hamilton submitted that the Applicant had tried to come to an arrangement with the Respondent to repay the arrears. He pointed to the various letters which he had sent on behalf of the Applicant to the Respondent in terms of the pre-action requirements for private residential tenancies as set out in regulation 4 of The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. He also referred to the informal emails between the parties which had been included in his submission of 1 October. He said that the Respondent had not engaged with the Applicant in any meaningful way regarding repayment of the arrears.
12. The tribunal chairperson noted that at the time the application was accepted, the arrears which had been notified to the tribunal totalled £6843.02. While Mr Hamilton had submitted an updated rent statement to the tribunal on 1 October 2024, this could not be considered by the tribunal as a request to amend the sum claimed. Should the Applicant wish the tribunal to consider granting an order for the current amount of the outstanding arrears i.e. £7758.54, he would need to request to amend the application under rule 14A of the 2017 rules. This would require the Applicant to request such an amendment by intimating this to both the tribunal and the Respondent at least 14 days prior to a CMD or hearing.
13. It was therefore open to the Applicant either to seek an order for £6843.02, and potentially make another future application for any further arrears, or to seek an adjournment of the present application in order to seek an amendment to increase the sum claimed.
14. The tribunal adjourned briefly to allow Mr Hamilton the opportunity to consult with the Applicant as to how he wished to proceed in respect of the payment order. Having discussed the matter with the Applicant, Mr Hamilton asked the tribunal to grant a payment order for the sum of £6843.02.

## **Findings in fact**

15. The tribunal made the following findings in fact:

- The Applicant owns the property jointly with his wife, Dr Amy Mitchell, who consented to the Applicant entering into the tenancy agreement in his sole name, and making the application to the tribunal in his sole name.
- The Applicant and his wife are jointly registered as the landlords for the property
- There is a private residential tenancy in place between the parties, which commenced on 15 December 2017.
- The rent due under the tenancy agreement was £924 per month, but the parties later agreed that this should be reduced to £860 per month.
- The rent is due in advance on the 10<sup>th</sup> of each month.
- At present, the sum of £658.96 is being paid direct to the Applicant in housing benefit for the Respondent every four weeks.
- The Respondent has been in arrears of rent since November 2021.
- The Applicant and his solicitor have been in contact with the Respondent on a number of occasions regarding the outstanding rent arrears.
- The Respondent owed the Applicant rent arrears totalling £6843.02 as at the date the application was made.

### **Reasons for decision**

16. In the absence of any written representations from the Respondent disputing the facts, or any appearance by her at the CMD, the tribunal considered that it was able to make sufficient findings to determine the case, and that to make a decision without a hearing would not be contrary to the interests of the parties. It therefore proceeded to make a decision at the CMD without a hearing in terms of rules 17(4) and 18 (1) (a) of the 2017 rules.
17. The application was not opposed by the Respondent, and she had not made an application for a time to pay direction.
18. On the basis of all the evidence before it, the tribunal was satisfied that the Respondent owed £6843.02 in rent to the Applicant as at the date the application was made.

### **Decision**

The tribunal grants an order for payment by the Respondent to the Applicant for the sum of £6843.02.

### **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.

Sarah O'Neill

8 October 2024

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Legal Member/Chair

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Date