



**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/24/0996**

**Re: Property at Flat E, 7 Crichton Street, Dundee, DD1 3AP (“the Property”)**

**Parties:**

**Harland Property Investments Ltd, 12 Langlands Street, Dundee, DD4 6SZ (“the Applicant”)**

**Ian Clark, whose present whereabouts are unknown (“the Respondent”)**

**Tribunal Members:**

**Joel Conn (Legal Member)**

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

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

**Background**

1. This is an application by the Applicant 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 and debt recovery costs. The tenancy in question was a Private Residential Tenancy (“PRT”) by the Applicant to the Respondent commencing on 3 August 2020.
2. The application was dated 28 February 2024 and lodged with the Tribunal on that date. The application sought payment of arrears of £613.08 plus a trace fee of £90. The arrears were said to be the balance due to the conclusion of the Tenancy on 10 July 2023.
3. The lease for the Tenancy accompanied the application and it detailed a rental payment of £525 payable in advance on the 3<sup>rd</sup> of each month. A rent statement also accompanied the application, showing the arrears comprising of unpaid rent for 3 May and 3 June of £525 per month, plus pro-rated rent for 3 to 10 July 2023

of £138.08. The statement also showed six payments from the Respondent (one of £75 plus five of £100) between 7 July 2023 and 4 January 2024 which were applied against the arrears reducing the balance to £613.08. An invoice for £75 plus VAT (£90) dated 6 September 2023 from Stirling Park for tracing work was also included in the application papers.

## **The Hearing**

4. The matter called for a CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 1 October 2024 at 11:30. I was addressed by Elisha Wilson, senior property manager, Premier Property Management. Her colleague, Rebecca Buist, trainee property manager, was also in attendance but did not provide any material submissions. There was no appearance from the Respondent.
5. I was informed by the clerk that no contact had been received from the Respondent (or on his behalf) with the Tribunal. Further, the Tribunal's Sheriff Officer had failed to locate the Respondent at the address provided in the application, and service by advertisement had then been undertaken in normal form. The Applicant's agent gave submissions that there had been no contact with the Respondent since the end of the Tenancy, though the six payments to account against arrears were received between 7 July 2023 and 4 January 2024 without any other contact from the Respondent. Having not commenced the CMD until around 11:35, 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 his behalf) to dial in late to the CMD.
6. I was satisfied with the arithmetic in the rent statement provided by the Applicant and that there was no dispute intimated by the Respondent, who had not sought to enter appearance. No submissions were provided in regard to the reasons for termination of the Tenancy but the date of termination of 10 July 2023 was not disputed as the Respondent had not sought to enter appearance.
7. I sought clarification as to the fate of a deposit of £575 that was referred to in clause 11 of the Tenancy Agreement. The Applicant's agent sought a brief adjournment and on recommencing confirmed that it had been uplifted on 24 August 2023 and applied partly against repairs (£70 for replacement door fobs and £67 for replacement of an internal door handle) and the remainder of £438 against arrears. In the circumstances, the Applicant's agent conceded that the balance of arrears was now reduced from £613.08 to £175.08 and moved for an order in the amount of £265.08, being the £175.08 of arrears plus £90 for tracing.
8. No motion was made for expenses or interest.

## **Findings in Fact**

9. On or about 13 and 14 July 2020 the Applicant let the Property as a Private Residential Tenancy to the Respondent under a lease with commencement on 3 August 2020 ("the Tenancy").

10. In terms of clause 8 of the Tenancy Agreement, the Respondent required to pay rent of £525 a month in advance on the 3<sup>rd</sup> day of each month.
11. Further in terms of clause 8 of the Tenancy Agreement, the Respondent agreed “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”.
12. The Tenancy terminated on 10 July 2023 with the Respondent ceasing to occupy after that date.
13. The Respondent failed to make payments of rent of £525 a month on 3 May and 3 June totalling £1,050.
14. The Respondent failed to make any payment of rent for the period 3 to 10 July 2023.
15. Pro-rated rent for 3 to 10 July 2023 is £138.08.
16. On 7 July 2023, the Respondent made a payment of £75 against arrears.
17. The total arrears as of 10 July 2023 was £1,113.08.
18. Between 4 September 2023 and 4 January 2024, the Respondent made five payments against arrears totalling £500.
19. On or about 28 August 2023, the Applicant received uplift of a deposit of £575.
20. The Applicant applied £438 of the deposit against the arrears, seeking to retain the balance of £137 against other costs.
21. The balance of arrears outstanding as of 1 October 2024 is £175.08.
22. On 6 September 2023, in regard to debt recovery steps against the Respondent, the Applicant incurred £75 plus VAT to Stirling Park for a trace report.
23. The Respondent received intimation of the CMD by way of service by advertisement and did not provide submissions, nor enter an appearance, in the application.

### **Reasons for Decision**

24. 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, and the discussion at the CMD, that there were rent arrears remaining of £175.08 as of today plus a contractual debt recovery expenses damages claim of £90 in regard to the trace fee.

25. I was not provided with details as to how the termination of the Tenancy occurred, but there was no appearance by the Respondent to dispute arrears being due for a period to 10 July 2023. Further, I was not provided with vouching of the £137 of the deposit that was not applied to reduce the arrears (and was said to have been applied against other alleged costs). If the Respondent takes issue with the manner in which the deposit has been applied other than against the arrears, he has failed to take steps to dispute the sum sought but is free to raise his own application for repetition of any part of the deposit that he regards as incorrectly applied.
26. I was thus satisfied that the necessary level of evidence for these civil proceedings had been provided for an order of £265.08.
27. I shall make a decision to award the sum of £265.08 against the Respondent, being an order for rent arrears under the Tenancy to the termination date of 10 July 2023 and debt recovery costs thereafter.

### **Decision**

28. In all the circumstances, I was satisfied to make the decision to grant an order against the Respondent for payment of £265.08.

### **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.**

**1 October 2024**

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**Legal Member/Chair**

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**Date**