



**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/24/1461**

**Re: Property at 32b Miners Walk, Dalkeith, EH22 2AL (“the Property”)**

**Parties:**

**Legge Associates Limited, Annfield House, Eskbank Toll, Dalkeith, EH22 3DY (“the Applicant”)**

**Mr Gavin Fennessey, 32b Miners Walk, Dalkeith, EH22 2AL (“the Respondent”)**

**Tribunal Members:**

**Sarah O'Neill (Legal Member) and Elizabeth Williams (Ordinary Member)**

**Decision**

**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 £2075 should be granted in favour of the Applicant.**

**Background**

1. An application was received from the Applicant on 29 March 2024 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 £2075 in respect of rent arrears which were alleged to be due by the Respondent to the Applicant.
2. Attached to the application form in respect of the application were:
  - (i) Copy private residential tenancy agreement between the parties, which commenced on 25 June 2020.

- (ii) Copy Notice to Leave dated 12 February 2024 citing ground 12 (rent arrears), and stating the date before which proceedings could not be raised to be 14 March 2024.
  - (iii) Copy rent statement showing arrears of rent due by the Respondent to be £2075 as at 18 January 2024.
  - (iv) Copies of pre-action requirements letters sent by the Applicant to the Respondent on 26 September and 16 October 2023, and 2 February 2024, together with proof of sending by recorded delivery.
  - (v) Further information including a timeline of events and various text messages and emails between the parties regarding the rent arrears, the Respondent's behaviour and a broken window at the property.
3. The application was accepted on 23 April 2024.
  4. Further written representations were received from the Applicant on 19 August 2024. These included an updated rent statement which showed that the outstanding rent arrears remained at £2075 as at 26 July 2024.
  5. A case management discussion (CMD) took place by teleconference call on 29 August 2024, to consider both the present application and the accompanying eviction application (reference FTS/HPC/EV/1460). Mr Symon Legge, a Director of the Applicant company, was present on the teleconference call and represented the Applicant. The Respondent was present on the teleconference call and represented himself.
  6. Having heard from both parties, the Tribunal decided to adjourn the matter to another CMD, to give the Respondent the opportunity to seek advice regarding his financial situation, as well as the eviction proceedings and the application for a payment order.
  7. The adjourned CMD was scheduled for 4 November 2024. No further written representations were received from either party prior to the CMD.

### **The adjourned case management discussion**

8. The adjourned CMD was held by teleconference call on 4 November 2024 to consider both this application and the accompanying eviction application. Both Mr Legge and the Respondent were present on the teleconference call.

### **The Applicant's submissions**

9. Mr Legge asked the Tribunal to make a payment order for £2075 against the Respondent in respect of the arrears outstanding as at the date of the CMD. He confirmed that the outstanding rent arrears remained at the same level as

in the original application, as the Respondent's rent was still being paid in full via Universal Credit, as had been the case since January 2024.

10. Mr Legge noted that the Respondent had paid a deposit of £875 in terms of the tenancy agreement, which was currently held in an approved tenancy deposit scheme. He said that the Applicant would be seeking a deduction from the deposit for the sum of £256 which had been paid by the Applicant to replace a window at the property which had been broken by the Respondent. He said that once he had the property back following the eviction of the Respondent, he would consider whether there was anything else that required to be claimed from the deposit sum. Otherwise, the Applicant would claim the remainder of the deposit towards the outstanding rent arrears.

### **The Respondent's submissions**

11. The Respondent admitted that he owed the Applicant rent arrears of £2075. He was not currently working due to ill health, but said that he would try to pay the money owed as soon as possible. His situation had not really changed since the first CMD. He was still unwell and had been signed off from work for a few months by his doctor. He was still in receipt of Universal Credit.
12. He had had difficulty in obtaining advice from the CAB, but understood that he would be unable to obtain any further financial support.

### **Findings in fact**

13. The tribunal made the following findings in fact:
  - The Applicant owns the property and is the registered landlord for the property.
  - There is a private residential tenancy in place between the parties, which commenced on 25 June 2020.
  - The rent due under the tenancy agreement is £775 per month.
  - The Respondent has been in rent arrears since October 2022.
  - The Respondent owed the Applicant rent arrears totalling £2075 as at 4 November 2024.
  - The Respondent's rent has been paid in full via Universal Credit since January 2024.
  - The Applicant was in contact with the Respondent on a number of occasions regarding the outstanding rent arrears prior to making the application.
  - The Applicant had given the Respondent the opportunity to repay the arrears and had tried to resolve matters. Mr Legge had not served a Notice to Leave on the Respondent until he had been in arrears for around 15 months.

## Reasons for decision

14. The Tribunal considered that in the circumstances, it was able to make a decision at the CMD without a hearing as: 1) having regard to such facts as were not disputed by the parties, it was able to make sufficient findings to determine the case and 2) to do so 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.
15. The application was not opposed by the Respondent, who admitted that he owed the outstanding arrears. He had not made an application for a time to pay direction.
16. On the basis of all the evidence before it, the Tribunal was satisfied that the Respondent owed £2075 in rent to the Applicant as at the date of the second CMD on 4 November 2024.

## Decision

The tribunal grants an order for payment by the Respondent to the Applicant for the sum of £2075.

## 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

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Legal Member/Chair

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Date **4 November 2024**