

Housing and Property Chamber
First-tier Tribunal for Scotland



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) Act 2016

Chamber Ref: FTS/HPC/CV/24/2037

Re: Property at 73 Glen Esk, East Kilbride, Glasgow, G74 3UR ("the Property")

Parties:

Mr Graeme Edgar of 2 Broadlees Gardens, Chapelton, Strathaven, ML10 6SN, Mr Stuart Edgar of The Stables, East Browncastle, Strathaven, ML10 6QW and Mr Keith Edgar of 7 Tak Me Doon Road, Larbert, FK5 4GY ("the Applicants")

Mr Kris Revill, 73 Glen Esk, East Kilbride, Glasgow, G74 3UR ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

At the Case Management Discussion ("CMD"), which took place by telephone conference on 10 December 2024, the First Applicant was in attendance and was represented by Mr Adam Gardiner of Lindsays. Ms Sarah Gallagher of Let Property Management was also in attendance as an observer. The Respondent was neither present nor represented.

The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules") had been satisfied relative to the Respondent having received notice of the CMD and determined to proceed in the absence of the Respondent in terms of Rule 29.

The CMD took place in respect of this application and the related application bearing reference FTS/HPC/EV/24/2036.

Prior to the CMD the Tribunal had received from Mr Gardiner emails dated 26 November and 2 December 2024 with attachments.

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that:-

Background

- i. The Applicants are the heritable proprietors of the Property.

- ii. The Applicants leased the Property to the Respondent in terms of a Private Residential Tenancy Agreement ("the PRT") that commenced on 4 June 2021
- iii. The rent payable in terms of the PRT is £425 per calendar month.
- iv. A deposit of £545 was payable under the PRT to be held in an approved scheme, namely Letting Protection Service Scotland.
- v. On 9 February 2024, the Applicants' agent served on the Respondent by email a Notice to Leave to expire on 11 March 2024 on the basis of Grounds 10, 11, 12 and 14 of Schedule 3 of the Private Housing(Tenancies)(Scotland) Act 2016 ("the 2016 Act").
- vi. As at the date of the Notice to Leave being served the arrears accrued were £5,512.77.
- vii. The Applicants seek a payment order.

The CMD

At the CMD Mr Gardiner referred to his Submissions dated 26 November 2024 and made the following additional oral representations, supplemented by oral representations from Mr Graeme Edgar as required, in support of the application:-

- i. The current rent arrears balance is £9,762.77.
- ii. No payments have been paid by the Respondent since 25 February 2023 when he made a payment of £257.
- iii. There have been many attempts to address with the Respondent the arrears accrued involving Applicants' past and present Letting Agents as well as Mr Gardiner's firm, Lindsay's.
- iv. The Respondent has made no offers to settle the arrears nor has he provided any explanation for non-payment of rent other than the that the Property is unsafe.
- v. On 17 July 2024 the Property was inspected following a right of access application to the Tribunal by the Applicants in which a warrant was granted by the Sheriff at Hamilton Sheriff Court on 6 June 2024, and no issues were identified that would make the Property unsafe.
- vi. With regard to access to the Property and despite communications with the Respondent he failed to allow access to the Property in clear breach of the PRT. A warrant was needed to for access to be obtained.
- vii. In around the November 2022 there was water leaking from the Property into the flat downstairs and complaints were received at that time. There have been no ongoing complaints. The Respondent still insists the property is not habitable.
- viii. The Respondent comes and goes from the Property. When he is the there are reports of antisocial behaviour. The Property is not the Respondent's only or principal residence. He has had various "run ins" with the police who forced entry on 18 August 2024 in connection with an outstanding arrest warrant. The antisocial behaviour team at South Lanarkshire Council has been involved and the Precognition of Brian McAvoy, an Investigation Officer in the Antisocial Investigation Team at the Council together with emails recording complaints as recently as October 2024 are sufficient proof of the facts.
- ix. Nothing is known about the employment circumstances of the Respondent.
- x. He is believed to have no other dependents, partner or family members living with him.
- xi. He has no known the disabilities or vulnerabilities.
- xii. The Applicants own four properties in total all of which are let out.
- xiii. There is a mortgage over the Property.
- xiv. On around 6 December 2024 a telephone call was received from an unidentified neighbour at the Property complaining that the Respondent was causing excessive

noise again and that water was leaking into their property. The Respondent attended with towels to help mop up the water. The Letting Agent was contacted to deal with the situation. It transpired the Respondent had pulled the toilet off the wall as he thought there was a blockage and an emergency plumber required to be instructed to reinstate the toilet and switch the water back on.

- xv. An order is sought in the amended sum of £9,762.77 with interest on that amount at 4% per annum from the date of the Tribunal's decision in terms of Rule 41A(2)(b) of the Rules.

The Tribunal adjourned to consider the application paperwork and the oral submissions made.

Findings in Fact

The Tribunal made the following findings in fact:-

- i. The Applicants are the heritable proprietors of the Property.
- ii. The Applicants leased the Property to the Respondent in terms of a Private Residential Tenancy Agreement ("the PRT") that commenced on 4 June 2021
- iii. The rent payable in terms of the PRT is £425 per calendar month.
- iv. A deposit of £545 was payable under the PRT to be held in an approved scheme, namely Letting Protection Service Scotland.
- v. On 9 February 2024, the Applicants' agent served on the Respondent by email a Notice to Leave to expire on 11 March 2024 on the basis of Grounds 10, 11, 12 and 14 of Schedule 3 of the Private Housing(Tenancies)(Scotland) Act 2016 ("the 2016 Act").
- vi. As at the date of the Notice to Leave being served the arrears accrued were £5,512.77.
- vii. The current rent arrears balance is £9,762.77.
- viii. No payments have been paid by the Respondent since 25 February 2023 when he made a payment of £257.
- ix. There is a mortgage over the Property.
- x. The Respondent has made no offers to settle the arrears nor has he provided any explanation for non-payment of rent other than the that the Property is unsafe.
- xi. Following an inspection of the Property on 17 July 2024 the Property was found to be safe.

Reasons for Decision

The Respondent did not submit any representations to the Tribunal and did not attend the CMD. The factual background narrated by the Applicants within the application papers and orally by Mr Gardiner and Mr Edgar at the CMD was not challenged and was accepted by the Tribunal.

The current rent arrears balance is £9,762.77. The Tribunal allowed the application to be amended to increase the amount claimed to that sum.

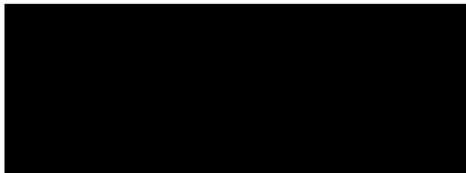
Whilst the PRT makes no provision for interest to be payable on rent arrears accrued, in the circumstances, the Tribunal considered it reasonable to order payment of interest on the sum of £9,762.22 at 4% per annum from the date of the Tribunal's decision until payment in terms of Rule 41A(2)(b) of the Rules.

Decision

The Tribunal grants order in favour of the Applicants ordering the Respondent to pay to the Applicants £9,762.77 with interest thereon at 4% per annum from the date of the Tribunal's decision until payment.

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.



Gillian Buchanan
Legal Member/Chair

10 December 2024
Date