



**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/24/1158**

**Re: Property at Marnoch, Barchain Farm, Buittle, Castle Douglas, DG7 1NN (“the Property”)**

**Parties:**

**Mr Andrew Sturgess, 27 Dalkeith Avenue, Glasgow, G41 5LF (“the Applicant”)**

**Ms Evaline Henderson, Marnoch, UNKNOWN, UNKNOWN (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment in the sum of One thousand two hundred and seventy five pounds (£1275) Sterling**

**Background**

1. This is an application for rent arrears raised in terms of Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”) and section 71 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. The application was accompanied by a Private Residential Tenancy Agreement between the parties dated 28 April 2019, an Order for Eviction dated 30 November 2023 and a Notice to Leave dated 17 April 2023.
3. On 3 April 2024, the Tribunal accepted the application under Rule 9 of the Regulations.

4. On 2 May 2024 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 23 May 2024. The Tribunal also advised both parties by letter on 2 May 2024 that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 10 June 2024. This paperwork was unable to be served on the Respondent as her whereabouts were unknown. The application was therefore served on the Respondent by advertisement in terms of Rule 6A of the Rules. A copy of the Execution of Service was received by the Tribunal administration and placed before the Tribunal.
5. The Respondent did not lodge any written representations by 23 May 2024.

### **Case Management Discussions**

6. The Tribunal proceeded with the CMD on 10 June 2024 at 10am. There was no appearance by or on behalf of either the Applicant or the Respondent despite the Tribunal keeping the conference call line open until 11.15am. The Tribunal subsequently issued its decision dismissing the application.
7. On 21 June 2024 the Tribunal received a request for recall of the decision from the Applicant. The Tribunal thereafter determined to recall its decision of 10 June 2024, it being in the interests of justice to do so. Reference is made to the decision of the Tribunal dated 5 July 2024 in this regard.
8. The second CMD took place on 13 December 2024. The Applicant was represented by Mr Kenneth McLean of Pollok and McLean Solicitors. There was no appearance by or on behalf of the Respondent. The Tribunal had before it a certificate of service confirming that notification of the CMD had been given to the Respondent in terms of Rule 6A and 17(2) of the Regulations by service on the Tribunal website. The Tribunal therefore determined to proceed in her absence.
9. Mr McLean confirmed that the Applicant sought a payment order in the sum of £1275, which was evidenced by the paperwork submitted with the application.

### **Findings in Fact**

10. The Applicant and Respondent entered into a tenancy agreement which commenced on 28 April 2019.
11. In terms of Clause 7 of the said tenancy agreement the Respondent undertook to pay rent at the rate of £425 per month.
12. As at 1 March 2024 arrears in the sum of £1275 had accumulated on the rent account.
13. Despite repeated requests the Respondent has refused or delayed in making payment of the sum due.

## **Reasons for decision**

14. The Tribunal was satisfied that it could reach a decision on the application following the CMD in the absence of the Respondent and it would not be contrary to the interests of the parties to do so. The Respondent had been given the opportunity to submit written representations, and participate in the CMD, but had failed to do either. The Tribunal therefore considered that it would be the interests of justice to proceed to a decision, taking into account the overriding objective to avoid delay insofar as proper consideration of the issues in this case.
15. The Tribunal was therefore satisfied, based on the documents produced by the Applicant, that the Respondent had a contractual obligation to pay rent at the rate of £425 per month. The Tribunal was also satisfied that the Respondent had failed to make payment of the contractual rent, resulting in arrears of £1275 as at 1 March 2024. The Respondent had submitted no evidence to contradict the position put forward by the Applicant.
16. The Tribunal therefore determined to make an order for payment in the sum of £1275.

## **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.**

# Ruth O'Hare

**13 December 2024**

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**Legal Member/Chair**

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**Date**