

**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/24/2200

Re: Property at Flat 3/2, 5-7 Forbes Place, Paisley, PA1 1UT (“the Property”)

Parties:

Ms Aileen Wilson, No 10 The Cross, Dalry, KA24 5AW (“the Applicant”)

Mr Andrew Carslaw, Flat 3/2, 5-7 Forbes Place, Paisley, PA1 1UT (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and John Blackwood (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order be granted in favour of the Applicant and against the Respondent in the sum of two thousand eight hundred pounds only (£2800.00).

Background

1. This application for a payment order was first lodged with the Tribunal on 13th May 2024 along with a related application for an eviction order with reference FTS/HPC/EV/24/ 2196. The applications were accepted by the Tribunal on 28th May 2024 and a case management discussion was fixed for both applications on 18th October 2024 at 10am.

2. The Applicant did not attend the case management discussion but was represented by Mr MacPherson of Brodies LLP solicitors. The Respondent did not attend and the Tribunal noted that Sheriff officers had affixed both applications to the door of the property on 16th September 2024. The Tribunal was satisfied that the Respondent had received notification of the applications and the date of the case management discussion and determined that it was appropriate to proceed in his absence.

3. The Tribunal had sight of the applications, papers apart, a tenancy agreement, a Notice to Leave with proof of postal delivery of the notice, a notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 with an e mail sending this to the local authority, a paper setting out the level of rent arrears, a pre action protocol letter and an updated statement of rent arrears as at 7th October 2024 showing accrued rent arrears of £4800.

4. The parties had entered into a private residential tenancy at the property with effect from 15th November 2022 with monthly rent payable by the Respondent on or before the 1st of each month in the sum of £350.

5. Mr Macpherson was seeking a payment order in the sum of £4800 being the sum currently outstanding in relation to the rent arrears accrued during the tenancy. Mr MacPherson confirmed that the total rent arrears had reached £4800 as of the date of the case management discussion. He said that the rent arrears were now in excess of 13 months' rent due in terms of the tenancy agreement. No rent had been paid since October 2023. He said there had been no engagement by the Respondent with the rent arrears. There had initially been some engagement between the parties but the Respondent had stopped engaging and the Applicant had assumed he was seeking to "hold out" until evicted.

6. Mr MacPherson indicated that the Applicant had received contact from Scottish Power the week before the case management discussion indicating that the pre-payment meter at the property had not been topped up lately and it was considered possible that the Respondent had moved out. However keys had not been returned and there had been no engagement, The Applicant was out of the country and could not go and try to check the situation but it was considered he may have abandoned the property. There had been no communication and despite efforts to contact him he had not responded to a pre action protocol letter and Mr MacPherson had no information regarding his circumstances. Mr Macpherson had no information to suggest that the rent arrears had accrued in relation to the delay or failure in payment of benefits to or on behalf of the Respondent.

7. The Tribunal asked MacPherson if he had intimated a change in the sum being requested by way of a payment order to the Respondent at least 14 days before the case management discussion as set out in rule 14 A of the Tribunal rules of procedure. Mr MacPherson accepted that he had not done that but had advised the Tribunal of the request on 7th October. It appeared that the Respondent (if still at the property) had not received the required notice of a change in the sum being requested by way of a payment order and it was unclear if the notification of this by the Tribunal would have reached him at all. Mr MacPherson requested an adjournment to take instructions on the position and this was permitted. When the Tribunal reconvened Mr MacPherson confirmed that he was content to go seek the sum set out in the original application, some £2800 due to the fact that it was considered the Applicant might struggle to recover the sums due from the Respondent.

8. The Applicant's solicitor had written to the Respondent on 13th March 2024 setting out the level of rent arrears and signposting him to sources of assistance in the event that he was having trouble paying the rent.

9. The Tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings In Fact

10. The parties entered into a private residential tenancy at the property with effect from 15th November 2022.

11. The monthly rent payable in terms of the agreement between the parties is £350 per month.

12. Rent arrears started to accrue in June 2023 and no rent has been paid since October 2023

13. Rent arrears accrued as of May 2024 have reached £2800.

14. The Respondent has not engaged to any extent with the Applicant over the rent arrears and is considered that he may have abandoned the property

15. The Applicant's solicitor sent a pre action protocol letter to the Respondent dated 13th March 2024 setting out sources of support if he was having trouble paying the rent but this communication received no response.

16. The Respondent has not returned the keys to the property

17. The Applicant has no information to suggest that the rent arrears have accrued as a result of any delay or failure in payment of a benefit to the Respondent.

18. The Respondent is thought to live alone at the property and no information is known regarding his personal circumstances.

19. The sum of £2800 is lawfully due by the Respondent to the Applicant in terms of rent arrears accrued during the tenancy.

Reasons for Decision

The Tribunal was satisfied that rent arrears had accrued during this tenancy and efforts to engage with the Respondent had been unsuccessful and that it was appropriate to grant an order for payment in these circumstances.

Decision

The Tribunal granted a payment order in favour of the Applicant and against the Respondent in the sum of two thousand eight hundred pounds only (£2800.00).

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.

Valerie Bremner

Legal Member/Chair

18.10.24
Date _____