



**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/24/2532**

**Re: Property at Flat 2/2, 43 Royal Street, Gourock, PA19 1PP (“the Property”)**

**Parties:**

**Gourock Property Company Ltd, 18 Nicolson Street, Greenock, PA15 1JV (“the Applicant”)**

**Mr Ross Mulholland, Flat 2/2, 43 Royal Street, Gourock, PA19 1PP (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Elizabeth Williams (Ordinary 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 Three thousand seven hundred and fifty pounds (£3750) Sterling together with interest at the rate of four per cent per annum from the date of decision until payment**

**Background**

1. By application to the Tribunal dated 4 June 2024 the Applicant sought a payment order against the Respondent in respect of unpaid rent, together with interest at the rate of four per cent per annum and expenses. In support of the application the Applicant provided a copy of the tenancy agreement between the parties and a rent statement.
2. By Notice of Acceptance of Application a Legal Member of the Tribunal with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. The application was therefore referred to a Case Management Discussion (“CMD”) on 16 December 2024, to take place by teleconference. Notification was sent to the parties in accordance with Rule 17(2) of the Rules of Procedure.

3. Said notification together with a copy of the application paperwork was served upon the Respondent by Sheriff Officers on 7 November 2024.
4. Both parties were invited to make written representations in advance of the CMD. On 6 November 2024 the Tribunal received an email from the Applicant's representative, Patton and Prentice Solicitors, with an updated rent statement. The Applicant requested an amendment of the sum claimed to reflect the arrears balance of £3750 in terms of Rule 14A of the Rules. No written representations were received from the Respondent.
5. On 13 December 2024 the Tribunal received a further statement from the Applicant's representative confirming that arrears had increased to £4100.

### **Case Management Discussion**

6. The CMD took place on 16 December 2024 by teleconference. Mr Ross O'Donnell of Patton and Prentice Solicitors represented the Applicant. The Respondent did not attend. The Tribunal noted that he had received notification of the CMD in accordance with Rule 17(2) of the Rules, and had been given the opportunity to submit written representations and participate in the CMD. The Tribunal therefore determined to proceed with the CMD in his absence.
7. The Tribunal asked Mr O'Donnell for his submissions on the application. For the avoidance of doubt the following is a summary of what was discussed and does not constitute a verbatim account of the CMD.
8. Mr O'Donnell confirmed that the Applicant sought a payment order in the amended sum of £3750. Whilst the arrears had since increased to £4100, he accepted that the Applicant was restricted to seeking the sum sought by way of amendment. Mr O'Donnell noted that the request for amendment had been made timeously on 6 November 2024 and intimated to the Respondent by recorded delivery mail, which had been tracked as received on 9 November 2024. Mr O'Donnell acknowledged that there was no contractual interest payable on the arrears under the terms of the tenancy agreement between the parties. He was therefore asking that the Tribunal use its discretion under the Rules to award interest, with the Applicant suggesting a rate of 4% per annum. With regard to the request for expenses, Mr O'Donnell explained that this was included with the application as a matter of course but he conceded that the Respondent had not participated in the proceedings to date.
9. The Tribunal adjourned to deliberate, during which time Mr O'Donnell left the call, before resuming the CMD and confirming its decision.

### **Findings in Fact**

10. The Applicant let the property to the Respondents under a tenancy agreement dated 17 May 2023.
11. In terms of Clause 8 of the said tenancy agreement the Respondent undertook to make payment of rent at the rate of £350 per calendar month.

12. As at 28 October 2024 arrears in the sum of £3750 are outstanding.
13. Despite repeated requests the Respondent has refused or delayed in making payment of the sum due.

### **Reasons for Decision**

14. The Tribunal determined that it had sufficient information upon which to make a decision at the CMD and that to do so would not be prejudicial to the parties. The Respondent had made no representations regarding the application and had not participated in the CMD. Accordingly the Tribunal did not identify any facts in dispute, nor any issues to be resolved, that would require a hearing to be fixed. The Tribunal was satisfied that it could make relevant findings in fact based on the information provided by the Applicant.
15. The Tribunal accepted, based on the documents submitted by the Applicant, that the Respondent had a contractual obligation to pay rent at the rate of £350 per month and that arrears of £3750 had accrued as at 28<sup>th</sup> October 2024. The Respondent had not put forward any representations to contradict the evidence from the Applicant in this regard. The Tribunal was satisfied that the Applicant's request to amend the sum claimed had been made timeously in accordance with Rule 14A of the Rules and intimated on the Respondent, and therefore that an order could be made in the increased sum.
16. The Tribunal was further satisfied that it would be reasonable to exercise its discretion under Rule 41A of the Rules and apply interest to the sum claimed at the rate of four per cent per annum from the date of this decision until payment.
17. The Applicant also sought expenses against the Respondent. The Tribunal considered the provisions of Rule 40 of the Rules, which provides that the Tribunal may make an award of expenses "*but only where that party through unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense*". In light of the fact that the Respondent had not participated in the Tribunal proceedings the Tribunal was unable to find any evidence of unreasonable behaviour in his conduct of the case. The Tribunal accordingly declined to make an award of expenses.
18. The Tribunal therefore made an order for payment in the sum of £3750 together with interest at the rate of four per cent per annum from the date of this decision until payment.
19. The decision of the Tribunal was unanimous.

### **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.**



**16 December 2024**

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**Date**