



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)**

**Chamber Ref: FTS/HPC/CV/24/2925**

**Re: Property at 36 Tulligarth Park, Alloa, Clackmananshire, FK10 2DD (“the Property”)**

**Parties:**

**Mr Walter Wheeler, 29 Coats Crescent, Alloa, Clackmananshire, FK10 2AQ (“the Applicant”)**

**Gordon Stirling, Mr John Stirling, 53 Argyll Street, Alloa, Clackmananshire, FK10 3RS; UNKNOWN, UNKNOWN (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member) and Gerard Darroch (Ordinary Member)**

**Decision (in absence of the second-named Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment by the Respondent in the sum of £7,282.82 should be made in favour of the Applicant.**

**Background**

1. By application received on 26 June 2024, the Applicant sought a payment order against the Respondent, originally in the sum of £2,909.35, in respect of rent arrears. The Respondents were father and son, the first-named Respondent being the Guarantor in respect of the tenancy and the second-named Respondent being the Tenant. Supporting documentation was submitted with the application, including a copy of the tenancy agreement and a rent statement which showed the balance owing as at 1 August 2024.
2. An eviction application was subsequently lodged and was conjoined with this application. Both applications called on the same date for a Case Management

Discussion (“CMD”) but were dealt with separately at the CMD as the eviction application was only against the second-named Respondent in this application (the tenant).

3. Following initial procedure, the application was subsequently accepted by a Legal Member of the Tribunal acting with delegated powers from the Chamber President who issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations on 27 August 2024.
4. Notification of the application was made to the first-named Respondent by Sheriff Officer service on 10 February 2025. Sheriff Officer service on the Respondent at the tenancy address was unsuccessful and service thereafter took place by way of Advertisement on the Tribunal website from 12 February 2025 until 14 March 2025 (the date of the CMD).
5. On 24 February 2025, written representations were received by email from the first-named Respondent, confirming that he was prepared to accept liability, as Guarantor in respect of the tenancy, in respect of rent arrears, amounting to £7,282.82. He also confirmed that he would be in attendance at the CMD and would be represented by his son-in-law.
6. No written representations were received from the second-named Respondent nor any contact made with the Tribunal prior to the CMD.

### **Case Management Discussion**

1. The CMD took place by telephone conference call on 14 March 2025 at 10am. The Applicant, Mr Walter Wheeler, was in attendance, as was the first-named Respondent, Mr Gordon Stirling and his representative, Mr Douglas Cumming. The commencement of the CMD was delayed by 5 minutes to give the second-named Respondent an opportunity to join late but he did not do so.
2. Following introductions and introductory comments by the Legal Member, Mr Cumming explained Mr Gordon Stirling’s position in relation to the application, which was as had been stated in his written representations. It was confirmed that there had been contact with Mr Wheeler on behalf of Mr Gordon Stirling and that the figure accepted for the current rent arrears was agreed as £7,282.82. Mr Wheeler confirmed the position and explained the background of the arrears, that there had been no further payments received from the first-named Respondent since March 2024, as per the last rent statement submitted by him, and no communication from him since April 2024. Mr Cumming explained that Mr Gordon Stirling was in the same position in that he has not been receiving communication from his son, the second-named Respondent either. It was proposed that the sum agreed would be paid very quickly (within 5 days), depending on the outcome of the CMD today. However, this was subject to the proviso that the eviction order is granted today as Mr Gordon Stirling is not prepared to pay ongoing rent or further sums on behalf of his son.

3. There was some discussion regarding the possibility of the payment application being continued, pending the agreed settlement taking place, and the Applicant thereafter withdrawing the application. However, Mr Wheeler explained that this would not be acceptable to him and that he wished to have the security of both orders being granted today, to protect his own position. It was thereafter agreed that the Tribunal would adjourn the payment application briefly in order to consider the eviction application in the absence of Mr Gordon Stirling and Mr Cumming, and would thereafter re-convene in relation to this payment application when parties' positions may be clearer.
4. Following the Tribunal's consideration of the eviction application, Mr Gordon Stirling and Mr Cumming re-joined the CMD and were informed that the Tribunal had decided to grant the eviction order in the conjoined application. There was some further discussion regarding the matter and Mr Wheeler indicated that he understood Mr Gordon Stirling's concerns and was prepared to settle on the basis proposed, provided the agreed payment was made by Mr Gordon Stirling and in which case, he would not intend to pursue Mr Gordon Stirling for any further sums that may become due before Mr John Stirling vacates the Property. There was brief discussion about the timescale for enforcement of the eviction order and the timing/logistics of payment being made to Mr Wheeler.
5. The Tribunal confirmed that a payment order would be granted in the agreed sum. Parties were thanked for their attendance and the CMD brought to a close.

### **Findings in Fact**

1. The Applicant is the joint owner and landlord of the Property.
2. The second-named Respondent is the tenant of the Property by virtue of a Short Assured Tenancy which commenced on 1 July 2017.
3. The first-named Respondent is the Guarantor in respect of the tenancy and the father of the second-named Respondent.
4. The monthly rent in respect of the tenancy was originally £495 per calendar month which increased to £509.85 per calendar month from 1 September 2023.
5. There was a background of rent arrears with arrears first arising in 2023, when two months' rent was unpaid.
6. Rent payments resumed thereafter but then stopped again, the last payment being received during March 2024.
7. Rent arrears amounted to £2,909.35 when this application was lodged and have now increased to £7,282.82.
8. The second-named Respondent remains in occupation.

9. The Respondent had been called upon repeatedly to make payment of the rent arrears owing, but has failed to do so.
10. The second-named Respondent has not offered any recent explanation for the rent arrears, having failed to engage with the Applicant since April 2024.
11. The first-named Respondent submitted written representations, attended the CMD and agrees the amount of rent arrears owing.
12. The second-named Respondent has not submitted any written representations and did not attend the attend the CMD.
13. The sum of £7,282.82 is due and resting owing by the Respondent to the Applicant in respect of rent arrears incurred during the tenancy in terms of this application and has not been paid by the Respondent.

### **Reasons for Decision**

1. The Tribunal considered all of the background papers, including the application and supporting documentation and the oral submissions made by the Applicant and on behalf of the first-named Respondent at the CMD. The first-named Respondent admitted liability in respect of the rent arrears, in his capacity as Guarantor in terms of the tenancy. The Tribunal noted that no representations had been made by the second-named Respondent and that he did not attend the CMD, having been properly and timeously notified of same by way of Service by Advertisement on the Tribunal website for the requisite period. Officer. The Tribunal was satisfied that the application was in order and that the second-named Respondent was well aware of the rent arrears as the Applicant had made considerable efforts to engage with him regarding the matter. This was evident from the supporting documentation lodged by the Applicant, which included numerous communications to the Respondent, and also from the Applicant's oral submissions at the CMD.
2. The Tribunal considered that there was nothing to contradict the information on behalf of the Applicant and therefore no requirement to continue the application to an Evidential Hearing. They had regard to the terms of the tenancy agreement regarding the monthly rent due, the rent increase notification thereafter, and to the Rent Statements lodged on behalf of the Applicant. The Tribunal also took into account the oral representations at the CMD regarding the current level of arrears.
3. The Tribunal was satisfied that the Respondent was in arrears with rent and that the amount of £7,282.82 was owing in respect of unpaid rent to the Applicant. The Tribunal was satisfied that, in the circumstances, a payment order in this amount could properly be made at the CMD and that an Evidential Hearing was not required.

## **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.**

**Nicola Weir**

**Legal Member/Chair**

**14 March 2025**

**Date**