



**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/24/2323**

**Re: Property at 229 Ash Road, Abronhill, Cumbernauld, G67 3EA (“the Property”)**

**Parties:**

**Mrs Gail MacDonald, 11 Roseburn Court, Whitelees, Cumbernauld, G67 3PS (“the Applicant”)**

**Mr Gerry McIntosh, 229 Ash Road, Abronhill, Cumbernauld, G67 3EA (“the Respondent”)**

**Tribunal Members:**

**Sarah O'Neill (Legal Member) and David Fotheringham (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment by the Respondent of the sum of £4177.11 should be granted in favour of the Applicant.**

**Background**

1. An application was received from the Applicant’s representative on 21 May 2024 seeking a payment order in terms of rule 111 (Application for civil proceedings in relation to a private residential tenancy) of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”). The Applicant sought an order for payment of £2090 in respect of rent arrears which were alleged to be due by the Respondent to the Applicant.
2. Attached to the application form in respect of the application were:

- (i) Copy private residential tenancy agreement between the parties, which commenced on 1 October 2022.
  - (ii) Copy rent statement showing arrears of rent due by the Respondent to be £2090 as at 17 May 2024.
3. The application was accepted on 5 July 2024.
4. A case management discussion (CMD) took place by teleconference call on 19 November 2024 to consider both the present application and the accompanying eviction application (reference FTS/HPC/EV/24/2326). Ms Sharon Cooke and Ms Diane Kelly of Coda Estates were present on the teleconference call and represented the Applicant.
5. The Respondent was not present or represented on the teleconference call. The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules had been duly complied with. The tribunal therefore proceeded with the CMD in the absence of the Respondent.
6. Having heard from the Applicant's representatives, the Tribunal decided to adjourn both applications to another CMD. The reason for this was to allow the Applicant's representatives to locate all of the information which the Tribunal had requested from them in its direction of 30 October 2024 and to allow both the Tribunal and the Respondent to read this. This would also give the Applicant the opportunity to request an amendment of the application to increase the sum claimed, which Ms Cooke indicated she wished to do.
7. The Tribunal issued a further direction to the Applicant on 19 November 2024, requiring her to provide further information regarding compliance with the pre-action requirements and the rent increase notice sent to the Respondent. The direction also set out the requirements for notification of any request to amend the sum claimed.
8. A response to the direction was received from the Applicant's representative on 6 January 2025. An updated rent statement was received from the Applicant's representative on 5 February 2025, showing the outstanding rent arrears to be £4177.85.
9. No written representations were received from the Respondent prior to the CMD.

### **The adjourned case management discussion**

10. The adjourned CMD was held by teleconference call on 25 February 2025 to consider both this application and the accompanying eviction application. Ms Cooke represented the Applicant on the teleconference call. The Respondent was not present on the call. The tribunal delayed the start of the CMD by 10 minutes, in case the Respondent had been detained. He did not attend the teleconference call, however, and no telephone calls, messages or emails had been received from him.
11. The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date and time of a CMD had been duly complied with. The tribunal therefore proceeded with the CMD in the absence of the Respondent.

### **Preliminary issue**

12. The Tribunal noted that the various rent statements received from the Applicant's representative appeared to be inconsistent. It was unclear from these when rent payments had been made and what the current level of outstanding arrears was. Ms Cooke explained that there had been a recent internal transfer of the account from one branch of Coda Estates to another, which meant that various payments had been transferred across and then reappeared elsewhere.
13. Ms Cooke sent an up to date rent statement to the Tribunal during the CMD. This showed that, having paid nothing towards the rent between January and October 2024, the Respondent had paid his rent for four consecutive months between November 2024 and February 2025. Nothing had been paid towards the arrears, however. The outstanding sum due as at 17 February 2025 was £4177.11.

### **The Applicant's submissions**

14. Ms Cooke asked the Tribunal to make a payment order for £4177.11 against the Respondent in respect of the arrears outstanding as at the date of the CMD. She confirmed that the Applicant sought to amend the application to amend the sum claimed, as per the email which had been received from Coda Estates on 5 February 2025 enclosing an updated rent statement.
15. Ms Cooke confirmed that the Respondent had paid the rent for each month from November 2024 - February 2025, but that nothing had been paid towards the outstanding arrears. The Applicant's representatives were keen to seek a

resolution with the respondent. They had had made considerable efforts to engage with the Respondent about entering into a payment arrangement, but had been unsuccessful in contacting him.

16. Ms Cooke said that she understood the Respondent's rent was paid to him in full via housing benefit, but that he had failed to pay the rent to the Applicant between January and October 2024. This had led to the Applicant missing five consecutive payments to the mortgage over the property.

### **Findings in fact**

17. The Tribunal made the following findings in fact:

- The Applicant owns the property jointly with Ms Lynne Burns, who had confirmed to the Tribunal that she was happy for the application to proceed in the Applicant's sole name.
- The Applicant and Ms Burns are the registered landlords for the property.
- There is a private residential tenancy in place between the parties, which commenced on 1 October 2022.
- The rent due under the tenancy agreement was initially £395 per month, payable in advance on the 1<sup>st</sup> of each month.
- The rent was increased to £418.70 per calendar month from 1 September 2023. A rent increase notice was validly served on the Respondent, who did not challenge the increase.
- The Respondent has been in rent arrears since January 2024.
- The Respondent paid no rent between December 2023 and October 2024. He has paid the rent due each month from November 2024 to date.
- The Respondent owed the Applicant rent arrears totalling £4177.11 as at 17 February 2025.
- The Applicant's representative had contacted the Respondent on a number of occasions regarding the outstanding rent arrears prior to making the application. This included pre-action requirements letters dated 24 and 31 January, 18 February and 18 March 2024.
- The Applicant had given the Respondent the opportunity to repay the arrears and had tried to resolve matters.

### **Reasons for decision**

18. The Tribunal considered that in the circumstances, it was able to make a decision at the CMD without a hearing as: 1) having regard to such facts as were not disputed by the parties, it was able to make sufficient findings to determine the case and 2) to do so would not be contrary to the interests of the

parties. It therefore proceeded to make a decision at the CMD without a hearing in terms of rules 17(4) and 18 (1) (a) of the 2017 rules.

19. No written representations has been received from the Respondent to indicate that he opposed the application. He had not made an application for a time to pay direction.
20. The Tribunal consented to the Applicant's request to amend the sum sought to £4177.11. It noted that this was very slightly lower than the sum (£4177.85) set out in the rent statement attached to the amendment request dated 5 February 2025.
21. On the basis of all the evidence before it, the Tribunal was satisfied that the Respondent owed £4177.11 in rent arrears to the Applicant as at the date of the second CMD on 25 February 2025.

### **Decision**

The Tribunal grants an order for payment by the Respondent to the Applicant for the sum of £4177.11.

### **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.**

Sarah O'Neill

25 February 2025

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**Legal Member/Chair**

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**Date**