



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)  
Act 2014**

**Chamber Ref: FTS/HPC/CV/24/3665**

**Re: Property at 7/27 Portland Gardens, Edinburgh, EH6 6NQ (“the Property”)**

**Parties:**

**Jonathan McAllister, 4 Bradford Gardens, Carrickfergus, BT38 9EH (“the Applicant”)**

**Marek Dvorak and Jan Smrha, residing together at 7/27 Portland Gardens, Edinburgh, EH6 6NQ (“the Respondents”)**

**Tribunal Members:**

**Andrew Cowan (Legal Member) and Ann Moore (Ordinary Member)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined**

- (1) that the sum of £1594 is lawfully due by the Respondents and granted an order for payment of that sum by the Respondents to the Applicant, together with interest thereon at the rate of 4% per annum running from the date of the decision of the First-tier Tribunal to grant this order, being 10<sup>th</sup> March 2025, until payment, and**
- (2) that the sum of £1662 is lawfully due by the Respondents and granted an order for payment of that sum by the First Named Respondent to the Applicant.**

**Background**

1. By an application dated 6<sup>th</sup> August 2024 (“the Application”), the Applicant sought an order for payment of £1636 from the Respondents in respect of rent arrears, together with interest thereon at the rate of 4% per annum.

2. A copy of the Application, along with a letter from the Tribunal giving details of a proposed Case Management Discussion, was intimated by Sheriff Officers upon both the Respondents on 31<sup>st</sup> January 2025.
3. A Case Management Discussion (“CMD”) took place by teleconference on 10<sup>th</sup> March 2025. The Applicant was represented at the CMD by his solicitor, Mr. David Gray.
4. The Respondents did not join the CMD call. The Tribunal was satisfied that the Application, and details of the CMD, had been intimated upon both the Respondents by Sheriff Officers on 31<sup>st</sup> January 2025. The Tribunal was satisfied that the Respondent had been given reasonable notice of the date, time and place of the CMD and that the requirements of rule 24(1) of the First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Procedure Rules”) had been duly complied with. The Respondents had emailed the Tribunal on the 18<sup>th</sup> and 19<sup>th</sup> February 2025. In those emails they had asked for assistance in relation to the application. The Tribunal had responded to the Respondents’ emails to advise that the Tribunal was not able to give advice to parties. The Tribunal directed the Respondents to a list of agencies who may be able to provide advice which is available on the Tribunal website. No further communication was thereafter received from either Respondent. In the circumstances the Tribunal proceeded with the application in accordance with rule 29 of those Procedure Rules.
5. At the CMD the Tribunal was able to consider the terms of the tenancy agreement between the parties. The tenancy agreement was a Private Residential Tenancy Agreement in relation to the Property. The tenancy between the parties had commenced on 24<sup>th</sup> October 2022. The initial monthly rent due in terms of the tenancy agreement between the parties was £1075. The rent due in terms of the tenancy agreement had thereafter been increased to £1107 per month.

#### Applicant’s Requests to Amend the Application

6. By email dated 25<sup>th</sup> February 2025 the Applicant sought to amend the sum claimed in their application by decreasing the sum sought by way of rent arrears to the figure of £1594 with interest thereon at the rate of 4% per annum. The Applicant’s request for payment had only been served by email upon the First Applicant on 25<sup>th</sup> February 2025. The Applicant had intimated an updated rent statement to the Tribunal and the First Respondent with their application to amend the sum claimed. That updated statement of rent and arrears showed total rent arrears due by the Respondent as of 20<sup>th</sup> February 2025 in the sum of £1594.
7. The Applicant also sought to amend the sum claimed in the application by seeking a further order for payment from the Respondents to recover the reasonable legal costs incurred by the Applicant arising from the Respondents’

failure to pay the rent due under the terms of the tenancy agreement between the parties. The Applicant sought payment of the sum of £1662 in relation to these costs. The Applicant had exhibited fee notes from Messrs Gilson Gray solicitors in the total sum of £1662 addressed to the Respondent. Those legal fees related to advice and representation provided to the Applicant in relation to this application and a conjoined application for eviction which the Tribunal also considered at the CMD. The Applicant's request to amend the application to include these additional costs had only been intimated by the Applicant upon the First Respondent.

8. In relation to the Applicants' request to increase the sum sought by way of rent arrears to the reduced figure of £1594 with interest thereon at the rate of 4% per annum the Tribunal considered the application under Rule 14A of the Tribunal Regulations (Request to amend the application in respect of matters other than new issues). The Tribunal noted that the First Respondent had notice of the proposed amendment at least 14 days prior to the CMD. No objection to the amendment had been intimated by the First Respondent. Intimation of the proposed amendment to decrease the sum claimed in respect of the rent arrears had not been intimated upon the second Respondent. The Tribunal took the view however that, as the Applicant was now seeking payment of a reduced sum in respect of rent arrears, the Second Respondent was not prejudiced by the proposed amendment. In the circumstances the Tribunal granted the Applicants' request to decrease the sum claimed (in relation to rent arrears) to £1594 with interest thereon at the rate of 4% per annum.
9. In relation to the Applicants' request to amend the sum claimed in the application to include a further sum of £1662 in respect of reasonable legal costs incurred by the Applicant the Tribunal noted that the tenancy agreement between the parties provides for the recovery of costs under Clause 37.1. That clause provides that the Applicant is entitled to recover costs associated with recovering unpaid rent or damages due to a non-fulfilment or breach in any way of the clauses contained in the lease. The Applicant claims that, having incurred costs as a direct consequence of the failure by the Respondents to uphold their contractual undertakings in relation to payment of the rent dues under the terms of the tenancy agreement, he should be indemnified for his reasonable and fully vouched costs.
10. The Applicants' request to amend the sum claimed in the application to include a further sum of £1662 in respect of reasonable legal costs incurred by the Applicant has only been intimated upon the First Respondent by email. No notice of the application to amend the application in this respect has been made upon the second Respondent. At the CMD the Applicant's solicitor submitted that the Tribunal could grant an order for this part of the (amended) claim against the First Respondent alone, as, under paragraph 1 of the tenancy agreement, each Tenant was jointly and severally liable for all obligations of the Tenant under that tenancy agreement. The Tribunal noted that the First Respondent had notice of the proposed amendment to include a claim for the further sum of £1662 at least 14 days prior to the CMD. No objection to the

amendment had been intimated by the First Respondent. The Applicant's proposed amendment had not been intimated upon the second Respondent. The Tribunal accepted that the Applicant could seek an order for this part of his amended claim solely from the First Respondent as he had accepted joint and several liability for all the obligations of the Tenant under the Tenancy agreement.

#### Findings in fact, and in fact and law: reasons for decision

11. The Applicants let the Property to the Respondent in terms of a written tenancy agreement which commenced on 24<sup>th</sup> October 2022. The current monthly rent due in terms of the tenancy agreement between the parties is £1107.
12. As at 25<sup>th</sup> February 2025 the Respondents had accrued arrears of rent under the terms of the tenancy agreement in the sum of £1594.
13. As at the date of the CMD the sum of £1594 remains due and owing by the Respondents to the Applicants in respect of arrears of rent incurred by the Respondent in respect of his occupancy of the property.
14. The Applicant has incurred legal costs in the sum of £1662 arising from the Respondents' failure to pay the rent due under the terms of the tenancy agreement between the parties.
15. As at the date of the CMD the sum of £1662 remains due and owing by the Respondents to the Applicants in respect of the costs incurred by the Applicant

#### Decision

Under rule 17(4) of the Procedure Rules the First-Tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

The Tribunal accordingly granted

- I. an order for payment by the Respondents to the Applicant in the sum of £1594 together with interest thereon at the rate of 4% per annum from the date hereof, until payment and
- II. an order for payment by the First Named Respondents to the Applicant in the sum of £1662.

## **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.**



**Andrew Cowan**

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**Legal Member/Chair**

**10<sup>th</sup> March 2025**

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**Date**