

Housing and Property Chamber
First-tier Tribunal for Scotland



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/24/2818

Re: Property at 8 Merryton Crescent, Nairn, IV125AQ (“the Property”)

Parties:

Mrs Wendy Simmonds, 25 Victoria Crescent, Brora, KW96QU (“the Applicant”)

Mr Jason Liddle, 8 Merryton Crescent, Nairn, IV125AQ (“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 £3600 should be granted in favour of the Applicant.

Background

1. An application was received from the Applicant's solicitor on 18 June 2024 for a payment order in terms of rule 111 (Application for civil proceedings in relation to a private residential tenancy under the Private Housing (Tenancies) (Scotland) Act 2016) of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”).
2. The Applicant was seeking an order for payment of £3600 in rent arrears alleged to be owed by the Respondent to the Applicant as at the date of the application.
3. Attached to the application form were:

- (i) Rent statement showing the Respondent's outstanding rent arrears to be £3600 as at 1 June 2024.
 - (ii) Copy notice to Highland Council under section 11 of the Homelessness etc. (Scotland) Act 2003 with proof of sending by email on 17 June 2024.
 - (iii) Copies of pre-action protocol letters sent by the Applicant to the Respondent and served by sheriff officer on 19 March, 5 and 22 April, all 2024.
 - (iv) Copy text messages between the parties dated 8 August 2021, 8 March 2022 and 2 December 2023.
4. In response to a request from the Tribunal administration, further information was received from the Applicant on 22 July 2024.
5. The application was accepted on 28 August 2024.
6. Notice of the case management discussion (CMD) scheduled for 11 March 2025, together with the application papers and guidance notes, was served on the Respondent by sheriff officer on behalf of the Tribunal on 5 February 2025. The Respondent was invited to submit written representations by 25 February 2025.
7. An updated rent statement was received from the Applicant on 3 March 2025. This showed that the outstanding rent arrears owed by the Respondent had increased to £7200 as at 1 March 2025.
8. No written representations or time to pay application were received from the Respondent prior to the CMD.

The case management discussion

9. A CMD was held by teleconference call on 11 March 2025 to consider the present application and the accompanying civil proceedings application (FTS/HPC/EV/24/2817). The Applicant was present on the teleconference call and represented herself.
10. The Respondent was not present or represented on the teleconference call. The Tribunal delayed the start of the CMD by 10 minutes, in case the Respondent had been detained. He did not join 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 case

management discussion had been duly complied with. It therefore proceeded with the CMD in the absence of the Respondent.

Preliminary issue

12. The Tribunal noted that the Applicant had not produced a written private residential tenancy agreement between the parties, albeit this was not a requirement for a valid application under rule 109. The Applicant said that the Respondent had moved into the property on 8 August 2024 as evidenced by a text message which she had submitted with the application. She said that they had agreed a rent of £450 per month.
13. The Respondent had been a tenant at the property previously, prior to the tenants who had preceded his current tenancy. The parties had made handwritten amendments to a previous tenancy agreement between them, which they had both signed. The Respondent had retained his original copy, but she had not received a signed copy from him. She had known him for a long time and trusted him, as he had previously been a good tenant. At the start of the tenancy, she was preoccupied with caring for her mother who had dementia, which had been very stressful, and had forgotten about getting a copy of the agreement. The Respondent had continued to pay the agreed rent on time until this stopped in December 2023.
14. The Tribunal was satisfied on the basis of the evidence before it that there was a private residential tenancy in place between the parties which had commenced on or around 8 August 2021.

The Applicant's submissions

15. The Applicant asked the Tribunal to grant a payment order in favour of the Applicant against the Respondent, in respect of the outstanding arrears. These were £3600 as at the date of the application, and the sum due as at the date of the CMD was £7200.

Findings in fact

16. The Tribunal made the following findings in fact:
 - The Applicant owns the property and is the registered landlord for the property.
 - There is a private residential tenancy in place between the parties, which commenced on or around 8 August 2021.

- The rent payable under the tenancy is £450 per calendar month, payable in advance on the first of each month.
- The Respondent has been in rent arrears continuously since December 2023.
- The Applicant has attempted to engage with the Respondent regarding payment of the arrears, including sending him several pre-action protocol letters.
- As at the date of the application, the Respondent owed the Applicant £3600 in rent arrears.

Reasons for decision

17. 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.
18. The Tribunal noted that, while the Applicant had submitted an updated rent statement on 3 March 2025 showing that £7200 was now owed by the Respondent, this had been submitted less than 14 days prior to the CMD. Any amendment seeking to increase the sum claimed must be sent to both the Tribunal and the Respondent at least 14 days prior to the CMD, in accordance with rule 14A of the 2017 rules.
19. The Applicant therefore confirmed that she wished to seek a payment order for £3600 only, rather than continuing the application to seek an amendment to the sum due.
20. No written representations had been received from the Respondent to indicate that he opposed the application. He had not made an application for a time to pay direction.
21. On the basis of all the evidence before it, the Tribunal was satisfied that the Respondent owed £3600 in rent arrears to the Applicant as at the date of the CMD.

Decision

The Tribunal grants an order for payment by the Respondent to the Applicant for the sum of £3600.

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

11 March 2025

Legal Member/Chair

Date