



**Decision with Statement of Reasons (as Reviewed) of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)**

**Chamber Ref: FTS/HPC/CV/24/0849**

**Re: Property at 51 Woodcroft Avenue, Largs, KA30 9EW (“the Property”)**

**Parties:**

**Mr Thomas Murray, 4 Bankhouse Crescent, Largs, KA30 9PH (“the Applicant”)**

**Ms Louise Ogilvie, 51 Woodcroft Avenue, Largs, KA30 9EW (“the Respondent”)**

**Tribunal Members:**

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

**Decision (as Reviewed)**

**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 £1,861.46 should be made in favour of the Applicant.**

**Background**

1. The application submitted on 21 February 2024 sought a payment order against the Respondent in respect of rent arrears. The amount sought was £2,708.14, £1,650 of which represented 66 months of a shortfall of £25 per month between the rent due and the payments received. Supporting documentation was submitted in respect of the application, including a copy tenancy agreement and rent statement showing the balance due of £2,708.14 at the time the application was made. A conjoined application was made at the same time for an eviction order under reference FTS/HPC/EV/24/0844.
2. Following initial procedure, on 30 April 2024, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations but specified

that the Applicant may have to provide further information to the Tribunal at the Case Management Discussion ("CMD") in respect of various aspects of the case.

- 3 Notification of the application and details of the CMD fixed for 12 August 2024 was served on the Respondent by way of Sheriff Officer on 5 July 2024. In terms of said notification, the Respondent was invited to lodge written representations. No written representations were lodged prior to the CMD, other than notification from CHAP that they were instructed on behalf of the Respondent and would be attending the CMD on her behalf.
- 4 The CMD took place by telephone conference call on 12 August 2024 at 2pm and was attended by the Applicant, Mr Thomas Murray, and on behalf of the Respondent by Mr Alister Meek of CHAP. Mr Murray provided further information in respect of the application, which was opposed by the Respondent on various grounds. The tenancy agreement on which the application was based was disputed by the Respondent, as was the monthly rent due (claimed to be £425 per calendar month, per an earlier joint tenancy, as opposed to £450 per calendar month, per the tenancy agreement founded upon by the Applicant which commenced in 2018. It was explained that the original tenancy had the Respondent and her former husband as joint tenants, whereas the tenancy agreement commencing in 2018, following the joint tenant moving out, named the Respondent as sole tenant. The Respondent's position was that the original joint tenancy was ongoing, that her former husband had not been properly removed from that tenancy and that she had not signed up to the new tenancy agreement produced by the Applicant. Accordingly, it was disputed by the Respondent that the rent due was £450 per calendar month. She disputed the sum sought. The application was adjourned to an Evidential Hearing given the issues in dispute and a Direction issued to parties for further information to be lodged and arrangements in respect of witnesses, etc at the Evidential Hearing.
- 5 Both parties lodged further documentation prior to the Evidential Hearing. In terms of the Direction, the Applicant lodged timeous written representations and supporting documentation by email on 13 and 30 August 2024 and 22 October 2024. The documentation included some extracts from Universal Credit documentation issued to the Applicant and some extracts from his banking documentation. The Respondent did not respond timeously to the Direction in lodging the documentation required of her within 28 days of the Direction. However, on 31 October 2024, the Respondent's representative emailed the Tribunal with some representations, explaining that the Respondent had not been able to produce the tenancy and Universal Credit documentation requested and was therefore not continuing with her arguments concerning the prior joint tenancy. She was, however, still disputing the sum claimed and lodged some bank statement excerpts, stated to show that she had made four additional payments towards rent, totalling £330, which had not been shown in the rent statement produced by the Applicant. This documentation was only circulated to the Applicant on 5 November 2024. Later that day, the Applicant emailed the Tribunal his response which included extracts from his own bank statements covering the relevant periods, stated to show that the payments

claimed to have been made by the Respondent had not been paid into his bank account. The Applicant's response was circulated to the Respondent's representative on 5 November 2024. No further communications were received from either party.

## **Evidential Hearing**

6. The Evidential Hearing took place by telephone conference call on 6 November 2024 at 10am. The Applicant, Mr Thomas Murray, was in attendance as was Mrs Andrea Gibson of CHAP, on behalf of the Respondent. Mrs Gibson explained that her colleague, Mr Meek, who had been dealing with the case was off sick today and she had been asked to cover at short notice. She had been unaware that this was an Evidential Hearing and understood that the Respondent herself was not attending. She had been advised by Mr Meek of the Respondent's position in relation to both applications, which were disputed, although she acknowledged that the eviction application had now been withdrawn by the Applicant as the Respondent had already vacated. In respect of the payment application, Mr Meek had stated that the sum due and regarding disputed payments required to be further investigated and had commented that the Applicant had not lodged anything to show that he had followed the 'pre-action protocol' in respect of the rent arrears which he had been requested to do in terms of the Tribunal's Direction.
7. Mr Murray stated that he was aware, from his knowledge of the family, that the Respondent was, in fact, out of the country and currently in Rome. He does not think it was ever her intention to attend and does not think it is acceptable for the Respondent to lodge paperwork at the last minute, well outwith the time limit stated in the Tribunal's Direction. Mr Murray explained that, on receipt of this documentation yesterday, he had spent some time locating paperwork from his bank to refute the Respondent's claims about having made additional payments and lodging this with the Tribunal. He made the point that the Respondent has had three months since the date of the CMD to lodge this paperwork. Although the Respondent vacated the Property as at 28 October 2024, she only gave him a few days notice of this but appears to have stopped her Universal Credit being paid to him, resulting in him being owed a further six weeks' rent. He thinks she has likely kept this money to pay for her trip to Rome and does not consider there should be any further delay with the case. He disputes that she has paid an extra £330 and wishes to pursue the full sum claimed.
8. The Tribunal Members consulted and agreed to adjourn the hearing briefly to allow Mrs Gibson the opportunity to try and contact the Applicant by telephone and obtain her instructions. On re-convening, Mrs Gibson advised that she had been able to take instructions from the Respondent by telephone. She was indeed out of the country and said she had been told by Mr Meek that she did not require to attend today. Her position is that, although the later tenancy agreement stipulates the rent as £450 per calendar month, she had had a verbal agreement with the Applicant that he would accept the sum of £425 per

calendar month, as this is the monthly amount paid by her Universal Credit. She does not have anything in writing to that effect. The Respondent also maintains that she has made payments in the total sum of £330 to the Applicant which he has not included in the Rent Statement and that extracts from her bank statements showing this have been lodged with the Tribunal.

9. The Legal Member explained that the position was not very satisfactory but that the Tribunal Members had discussed matters during the brief adjournment and were minded to proceed with the hearing today, in the absence of the Respondent, but would take into account the documentation she had lodged in support of her position, together with any submissions that Mrs Gibson wished to make on behalf of the Respondent. The Legal Member explained that the Tribunal would hear evidence from Mr Murray, that Mrs Gibson would have an opportunity to put any questions to him on behalf of the Respondent and that the Tribunal Members may also ask some questions.

#### Applicant's Evidence

10. Mr Murray explained the background to the rent arrears claim and how the amount he was claiming had been calculated. He made reference to the rent statement and other documentation that he had lodged. He stated that, as can be seen from the rent statement, after the new tenancy agreement was entered into in 2018, the Respondent did not pay the first three months' rent that was due, so immediately incurred arrears of almost £1,600. She told him that she was waiting for her Universal Credit to come through but he found out that this was not true and she had been spending the money on other things instead of paying her rent. There was then a special arrangement entered into so that the Universal Credit was paid to him direct, although it was limited to £425 per month which is what is paid for a two bedroom house in that area. There was therefore a top-up of £25 due from the Respondent every month, to meet the rent of £450. She did not pay this so the rent arrears kept building up but he let her stay on as he knew the family and wanted there to be continuity for her two girls. The arrears amounted to £2,708.14 when this action was raised. The arrears now amount to £3,483.14 because over the last six weeks, the Respondent must have asked Universal Credit to stop making direct payments to him as he has not been receiving any payments. The Legal Member explained to Mr Murray that, even if the Tribunal was satisfied after hearing evidence today that the higher amount was now owing, the Tribunal would only be able to grant an order today for the amount claimed in the application as a maximum. It was clarified that, an application to amend the application, accompanied by an up-to-date rent statement would have had to be lodged at least 14 days before the Evidential Hearing and intimated to the Respondent, in terms of the Tribunal Regulations. It was further explained that Mr Murray could lodge a separate application with the Tribunal in respect of further sums claimed to be owing, if he chose to do so. Mr Murray accepted the position.
11. As to the four payments that the Respondent claims to have paid, amounting to £330, Mr Murray referred to the extracts from bank statements that the Respondent had lodged. He pointed out that the way these have been

presented, with folded over bits of paper, makes it difficult to follow and also gives very limited information. There are no sort codes or account numbers showing where payments are going to. He thinks she could maybe have made a mistake when trying to make these payments and that they did not go where was intended, as he did not receive any of them into his bank account. He also pointed out that one of the payments of £100 which the Respondent claims to have made on 19 May 2019 is actually shown on her statement as having been made on 19 May 2021. He has included this amount in the entry for May 2021 on the rent statement. He referred to his own statements covering the relevant periods which he has produced. These show that the other three payments claimed to have been made by the Respondent were not received into his account. In response to questions from the Tribunal Members, Mr Murray confirmed that both statements produced relate to the bank account and their appearance differs because the first from 2019 is a hard copy statement and the more recent one from 2022 was obtained via online banking. Mr Murray confirmed this is a Nationwide Flex-Account and that it is the only bank account that the Respondent's rent was paid into. He stated that it can be seen from the statements he has produced that the Universal Credit payments were paid into this account. Mr Murray added that he did double-check his other bank accounts yesterday, when he received the documentation lodged on behalf of the Respondent, and the payments claimed to have been made by the Respondent had not been paid into any other account either.

12. Mrs Gibson was then given the opportunity to ask questions of Mr Murray on behalf of the Respondent. She put it to him, that, although the rent shown in the tenancy agreement is £450, that there was a verbal agreement between the parties that, as Universal Credit would only pay £425, that this is the monthly sum that the Applicant would accept for rent. Mr Murray denied this. He made the point that this also contradicts the Respondent's position put forward by Mr Meek at the CMD which was that she denied that there was any agreement between them on rent, either written or verbal, as she had denied that the 2018 tenancy in her sole name applied. Mrs Gibson mentioned the payments that the Respondent had claimed to have made and that Mr Meek had lodged supporting bank statement information with the Tribunal. As Mr Murray is disputing that, Mr Meek's instructions to her were to seek an adjournment so that there could be further investigation into the financial side of things.
13. The Legal Member explained that the Evidential Hearing had already taken place; that the Tribunal Members had decided that it was appropriate to proceed in the circumstances, as opposed to adjourning, given that the Respondent/Mr Meek had been aware since the date of the CMD that this was to be an Evidential Hearing, that the Respondent had already been given the opportunity to lodge supporting documentation timeously and to attend and give evidence on her own behalf today but had chosen/been advised not to; and that it was now for the Tribunal to reach a decision based on the documentary evidence lodged on behalf of both parties and the evidence/submissions heard today. Mrs Gibson indicated that she had no further questions for Mr Murray.



## Summing-up

14. Mr Murray said that he felt he had proven his case and that he should be granted an order for the sum claimed and shown in the rent statement of £2,708.14. He stated that this had been a long, drawn-out process and that the Respondent/ her representative had not responded in time to the Tribunal's Direction asking for supporting evidence or to Mr Murray's response to that.
15. Mrs Gibson stated that she accepted that there had been information lodged late and that it appeared from Mr Murray's evidence that he had been able to establish that arrears of £2,708.14 were owing. She apologised for the fact that she had not been fully aware of the facts of the case, having stepped in at the last minute this morning to cover for Mr Meek who had called in sick. She confirmed that Mr Meek would no doubt discuss the arrears further with the Respondent and see if a payment plan can be reached with Mr Murray in respect of the sum of £2,708.14.
16. Mr Murray referred to the further sum owing of £675, in respect of recent unpaid rent, and asked if a payment plan could incorporate that sum too.
17. The Legal Member explained that, in the circumstances, any payment plan would have to be negotiated between the parties outwith the Tribunal process but requested that Mrs Gibson inform Mr Meek of the further sum Mr Murray claims is owing in order that Mr Meek can take the Respondent's further instructions on that.
18. The Tribunal Members briefly conferred and confirmed that, given the evidence produced and heard today and the submissions made in summing up, the Tribunal was satisfied that an order in the sum of £2,708.14, as sought by the Applicant, should be granted. There was further brief discussion of the procedure which will now follow and parties were thanked for their attendance and participation in the Evidential Hearing.

## **Original Findings in Fact/Reasons for Decision**

1. The Applicant was the owner and landlord of the Property.
2. The Respondent was the sole tenant of the Property from 13 August 2018 until 28 October 2024 by virtue of a Private Residential Tenancy, although had previously occupied the Property by virtue of a previous tenancy.
3. The Respondent occupied the Property until she secured alternative accommodation and vacated on or around 28 October 2024.
4. The rent in respect of the tenancy was £450 per calendar month.

5. Rent arrears accrued immediately, as no rent was paid by the Respondent for the first three months of the tenancy.
6. Payments towards rent were then made via the Respondent's Universal Credit throughout most of the tenancy at the rate of £425 per calendar month.
7. The £25 per month shortfall between the rent payments due and the Universal Credit payments received by the Applicant was not paid by the Respondent.
8. The rent arrears owing when this application was made to the Tribunal amounted to £2,708.14 which is the sum claimed, although the Applicant claims that the arrears now amount to £3,483.14, due to Universal Credit payments having stopped prior to the end of the tenancy.
9. The Respondent disputed the amount of the arrears but had been unable to produce evidence establishing her position.
10. Rent arrears amounting to £2,708.14 are due by the Respondent to the Applicant in terms of this application.
11. The Respondent has been called upon to make payment to the Applicant but has failed or at least delayed to do so.

### **Reasons for Decision**

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation submitted by both parties, the oral evidence of the Applicant and the submissions by the Applicant and on behalf of the Respondent at the Evidential Hearing.
2. The Respondent initially disputed that the tenancy was governed by the Private Residential Tenancy commencing in 2018 which stipulated herself as the sole tenant and the rent as £450 per month. Her position was that an earlier tenancy in respect of which she was a joint tenant with her husband and the rent was £425 per month, was ongoing. However, prior to the Evidential Hearing, the Respondent's representative conceded that the Respondent had not been able to produce evidence of this and would not be pursuing this argument. However, the Respondent still disputed the amount of rent arrears claimed and had produced extracts from bank statements purporting to show that four further payments, amounting to £330 in total, had been made by the Respondent to the Applicant but were not included in the Rent Statement produced by the Applicant and should be deducted from the sum claimed.
3. At the Evidential Hearing, the Tribunal scrutinised the bank statement information produced by the Respondent and also by the Applicant in response to that. The Tribunal heard oral evidence from the Applicant who criticised the Respondent's documentation and also referred to his own documentation in

support of his position. The Tribunal was further able to test the Applicant's evidence by asking the Applicant a number of questions about other bank accounts, etc. The Tribunal accepted that the Respondent's documentary evidence did not support her contention regarding one of the payments she had claimed to have made on 19 May 2019. In respect of the other three payments, the Tribunal noted that, although the excerpts from the Respondent's bank statements showed payments having been made to "Mr Thomas Murray" for "rent", no sort codes or account numbers were shown and the Applicant had produced copies of his own bank statements for the account into which he stated the Respondent's rent was paid, covering the relevant periods, which countered the Respondent's evidence. The Tribunal was not offered any explanation on behalf of the Respondent in respect of the Applicant's documentary evidence and had not attended the Evidential Hearing which would have allowed her to give her own oral evidence and to have been questioned by the Applicant and the Tribunal Members on that. The Tribunal did not consider that it had any evidence before it to support the suggestion put forward by the Respondent's representative at the Evidential Hearing that there was a verbal agreement between the parties to the effect that the Applicant would accept payments of £425 per month towards the rent of £450. The Tribunal considered that the Applicant's position in respect of the rent arrears had been consistent throughout the Tribunal process and was supported by the documentation he had lodged with the application originally, in response to the Tribunal's Direction and in response to the documentation lodged on behalf of the Respondent.

4. In summary, the Tribunal was satisfied that the Applicant's claim against the Respondent was well-founded and had been established in evidence. The Tribunal found him consistent in his evidence throughout and credible. The Respondent's representative at the Evidential Hearing was not in a position to effectively counter the Applicant's position and conceded this in summing-up.
5. The Tribunal concluded that, in all the circumstances, the Applicant was entitled to a payment order against the Applicant in the sum of £2,708.14.

### **Review Request from Respondent/Further Procedure**

1. Following the Evidential Hearing, the Tribunal's Decision was issued to parties on 11 November 2024. A request for Review of the Decision in terms of Rule 39 of the Regulations was then received from Mr Alister Meek of CHAP on behalf of the Respondent on 25 November 2024. The request was submitted with some supporting documentation, including screenshots of some messages between the parties and from the Respondent's Universal Credit journal. The request from the Respondent was that the Decision be reviewed and an amended Order issued in the reduced sum of £1,761.46. The basis for this was that the Respondent had made further payments amounting to £330 direct to the Applicant in respect of rent which he had not taken into account and that further payments from the Respondent's Universal Credit amounting to £616.68



had also not been taken into account. Therefore, a reduction in the total sum of £946.68 was sought.

2. The Review request was circulated to the Applicant and the Tribunal Members, following which the Tribunal advised that the Decision would be reviewed and issued a Direction to both parties dated 5 December 2024. The Direction required further representations/information to be provided by both parties, including their comments as to whether the matter could be determined without a further hearing. Further responses and documentation were subsequently received from the Applicant on 6 December 2024, the Respondent on 18 December 2024 and the Applicant on 19 December 2024, 8 January 2025 and 5 February 2025. The Applicant conceded the sum of £616.68 could be deducted but maintained his position in respect of the further £330 reduction that the Respondent was seeking. The Tribunal considered these responses and subsequently issued a second Direction dated 28 February 2025, which required the Respondent to provide further representations and more detailed information from her bank records to establish the bank accounts into which the further alleged payments had been made. The Respondent complied with the Direction and lodged further representations and documentation. The Respondent now accepted that the sum of £100 could be deducted from the £330 that they thought originally should be deducted from the sum claimed by the Applicant. This was circulated to the Applicant, requesting his further response. On 23 April 2025, the Applicant confirmed that he would now accept that the three further payments amounting to £230 could be deducted from his claim.

### **Additional Findings in Fact (following Review)**

1. Further payments had been made to the Applicant towards rent during the tenancy from the Respondent's Universal Credit amounting to £616.68 which the Applicant had not taken into account in his calculations.
2. Further payments of £30 on 17 May 2021, £100 on 2 March 2022 and £100 on 4 March 2022, totalling £220 were made direct by the Respondent to the Applicant which the Respondent had not taken into account in his calculations.
3. The Applicant now accepts the above.
4. Rent arrears in the reduced sum of £1,861.46 are due by the Respondent to the Applicant in terms of this application.

### **Reasons for Reviewed Decision**

1. As a consequence of the Review and the outcome of this further procedure and further documentation lodged, parties were in agreement as regards the reduced sum owed to the Applicant in respect of this application being

£1,861.46. The Tribunal was aware from the Applicant that he considered he was owed further rent from the Respondent which had accrued between the period covered by this application and the Respondent vacating the Property. The Tribunal had previously explained to the Applicant that any further sums claimed to be due were outwith the scope of this application and would have to be claimed by way of a separate application to the Tribunal from the Applicant, in the event that the matter could not be agreed by dialogue between the Applicant and the Respondent's representative, Mr Meek of CHAP.

2. The Tribunal accordingly determined that an Order for Payment in the reduced sum of £1,861.46 should be granted to the Applicant and that there was no requirement for a further hearing to take place.

### **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

15 May 2025  
Date