



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)**

**Chamber Ref: FTS/HPC/CV/24/4392**

**Re: Property at Flat 2/2 Ferguslie Walk, 39 Tannahill Court, Renfrew, PA1 2RQ (“the Property”)**

**Parties:**

**Mr Scott MacColl, Mrs Sarah-Jane MacColl, 30 Tedder Drive, Waddington, Lincolnshire, LN5 9NG (“the Applicant”)**

**Miss Courtney Murphy, Flat 2/1, 173 Dumbarton Road, Clydebank, Glasgow, G81 1UL (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member)**

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

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) made an order for payment in the sum of Two thousand one hundred and thirty five pounds (£2135) Sterling

**Background**

- 1 This is an application for a payment order under Rule 111 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 and section 71 of the Private Housing (Tenancies) (Scotland) Act 2016. The Applicants sought an order for unpaid rent in the sum of £2530.
- 2 The application was referred to a case management discussion (“CMD”) to take place by teleconference on 19 May 2025. The Tribunal gave notification of the CMD to parties. Said notification was served upon the Respondent by sheriff officers on 4 March 2025.

- 3 On 26 April 2025 the Tribunal received written representations from the Respondent. The Tribunal intimated a copy of the Respondent's representations to the Applicants.

### **The CMD**

- 4 The CMD took place on 19 May 2025 by teleconference. Mr Robert Nixon of Ritehome represented the Applicants who were not in attendance. The Respondent did not join the call. The Tribunal delayed the start time of the CMD before determining to proceed in her absence.
- 5 The Tribunal had the following documents before it:-
  - (i) Form F application form dated 19 September 2024;
  - (ii) Title sheet REN126860 confirming the Applicants as the registered owners of the property;
  - (iii) Excerpt from the online landlord register confirming the Applicants' landlord registration;
  - (iv) Private residential tenancy agreement between the parties;
  - (v) Rent statement; and
  - (vi) The Respondent's written representations.
- 6 The Tribunal heard submissions from Mr Nixon on the application. For the avoidance of doubt the following is a summary of the key elements of the submissions and does not constitute a verbatim account.
- 7 Mr Nixon confirmed that the Applicants had received the deposit back from the deposit scheme and had paid this towards the arrears. He was therefore seeking an order in the reduced sum of £2135. Mr Nixon explained that the tenancy commenced in April 2019 and the arrears started to build up in November 2019. They had considerably accelerated during the Covid-19 pandemic. Mr Nixon explained that he and his colleagues were always speaking with the Respondent to try and work out payment plans. She always promised payments which did not materialise. However, in early 2021 she contacted Ritehome and advised that she had entered into a debt agreement scheme and could only offer payments of £25 per month towards the arrears. She had adhered to this and the arrears slowly reduced. The Applicants then sent her a notice to leave in September 2023 as they required to sell the property. They were in financial hardship, with a mortgage in negative equity. The Respondent did not leave until 30 June 2024, after the Applicants submitted an eviction application to the Tribunal. Upon leaving the property the Respondent agreed to pay £40 per month towards the arrears. She made no further payments and there had been no more contact from her.
- 8 Mr Nixon referred to the Respondent's written representations. He noted that she was claiming a rent abatement due to the condition of the carpets. He acknowledged that the carpets were not great and he had been speaking with

the Applicants to have them replaced. However, he could not carry out this work without the Applicants' authorisation. Mr Nixon did not know if the carpets were a fire risk. They were ruffled and frayed in parts. Mr Nixon noted that the Respondent stated the arrears had accrued due to her wrongly withholding rent due to an issue with the washing machine. Mr Nixon confirmed that the washing machine had been replaced before the majority of the arrears began to accrue. The Respondent had never mentioned in her discussions regarding the arrears that this was the cause. She accepted the arrears were due and had been making payments towards the debt prior to leaving the tenancy.

### **Findings in fact**

- 9 The Applicants and the Respondent entered into a tenancy agreement in respect of the property, which commenced on 1 April 2019.
- 10 The tenancy between the parties was a private residential tenancy as defined by section 1 of the Private Housing (Tenancies) (Scotland) Act 2016.
- 11 In terms of Clause 8 of the said tenancy agreement the Respondent undertook to pay rent at the rate of £395 per calendar month.
- 12 The tenancy between the parties terminated on 30 June 2024.
- 13 As at the date of termination rent arrears in the sum of £2530 were outstanding.
- 14 The Applicants received the tenancy deposit in the sum of £395 from the tenancy deposit scheme.
- 15 As at the date of this decision rent arrears in the sum of £2135 are outstanding.

### **Reasons for Decision**

- 16 The Tribunal was satisfied it had sufficient information before it to make relevant findings in fact and reach a decision on the application having regard to the application paperwork and the submissions heard at the CMD. In terms of Rule 17(4) and Rule 18(1) of the Rules the Tribunal determined that it could make a decision at the CMD as there were no issues to be resolved that would require a hearing and the Tribunal was satisfied that to make a decision would not be contrary to the interests of the parties.
- 17 Based on the application paperwork, the Tribunal accepted that the Respondent had agreed to pay rent at the rate of £395 per month under the terms of the tenancy agreement between the parties. The Tribunal was also satisfied that rent arrears of £2530 had been outstanding when the tenancy terminated, and had since reduced to £2135 following the return of the deposit. These matters were not in dispute.
- 18 The Tribunal carefully considered the Respondent's written response to the application. Whilst the Tribunal took into account her position, ultimately the

Tribunal preferred the submissions from Mr Nixon, and accepted these as fact. He clearly had a detailed knowledge of the case and his submissions were clear and consistent. The Respondent had not attended the CMD therefore the Tribunal had been unable to seek further information from her regarding her response. However, the Tribunal noted from the rent statement produced that the Respondent had been making regular payments towards the debt prior to leaving the tenancy, which appeared at odds with her argument that rent should be abated due to the condition of the carpets. She had asked the Tribunal to take into account the Applicants' failure to comply with the Repairing Standard, but did not indicate that she had sought to make an application to the Tribunal for a repairing standard enforcement order. The Tribunal further concluded that her statement that the arrears accrued due to her withholding rent to enforce repairs to the washing machine was not credible, on the basis that the Applicants had replaced the washing machine prior to the accrual of the bulk of the arrears during the pandemic. It appeared instead that she was in fact in financial difficulty at the time, which had ultimately led her to enter into a debt arrangement scheme.

- 19 The Respondent had also asked the Tribunal to take into account factors that are not relevant as a defence to a claim of this nature. These included poor advice she had received regarding withholding rent, her inability to manage issues and make informed decisions due to her age, lack of parental advice and support and the notice to leave which had been sent after she had complained again about the carpets. With regard to the last point, the Tribunal again preferred the submissions from Mr Nixon. The Tribunal accepted that the Applicants were suffering financial hardship, which had led to the decision to sell the property. This was a credible explanation for the action they had taken.
- 20 The Tribunal therefore concluded that the Respondent did not have an arguable defence to the application and determined to make an order for payment in the sum of £2135.

### **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.**

**Legal Member: Ruth O'Hare**

**Date: 19<sup>th</sup> May 2025**

