



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

Chamber Ref: FTS/HPC/CV/24/4784

**Re: Property at 31 Marmion Road, Greenfaulds, Cumbernauld, Glasgow, G67
4AN (“the Property”)**

Parties:

**Mrs Cely George, 13/81 McWhae Circuit, Wanniasa, Act 2903, Canberra,
Australia (“the Applicant”)**

**Mrs Kelly Rae, Mr Stephen Rae, 110 Luing, Airdrie, ML6 8ED (“the
Respondents”)**

Tribunal Members:

**Martin McAllister (Legal Member) and Elizabeth Dickson (Ordinary Member)
 (“the tribunal”)**

Decision (in absence of the Respondents)

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

- (1) That an order of payment be made requiring the Respondents to pay the
sum of SEVEN THOUSAND EIGHT HUNDRED AND FORTY THREE
POUNDS 82 PENCE (£7843.82) (“the principal sum”) to the Applicant.**
- (2) That the Respondent pay interest to the Applicant at the rate of four
percent per annum on the principal sum running from the date of the
decision of the First-tier Tribunal, being 11 February 2026, until payment.**
- (3) That the Respondent be liable for the expenses of the Applicant in relation
to her application to the First-tier Tribunal, those expenses being as taxed
by the Auditor of the Court of Session and being only those from 11 April
2025.**

Background

1. This is an application dated 16 October 2024 for payment of £3909.28 in respect of rent arrears in respect of the Property.
2. Prior to a case management discussion on 11 April 2025, the Applicant submitted a rent statement showing the rent outstanding to be £6143.42 and making an application for the amount sought to be amended in accordance with Rule 14A of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).
3. On 6 February 2026, the Applicant submitted a Third Inventory of Productions together with a rent statement brought down to May 2025, and showing the level of arrears to be £7843.82.
4. At the case management discussion, the Respondents had indicated that there were repair issues at the Property which affected their use and enjoyment of it. Determination of the application was adjourned to an evidential hearing.
5. Directions were made under Rule 16 of the Rules.
6. A Direction was made on 11 April 2025 which required the Respondents to lodge, within 28 days, detailed written defences, giving details of preservation of the monthly rental and evidence of alleged faults in the Property.
7. The Respondents failed to respond to the Direction of 11 April 2025 and, on 14 July 2025, the Tribunal made a Direction which stated that the Direction of 11 April 2025 was issued of new and, if the Respondents failed to comply with it within 21 days, the Tribunal would dismiss the Respondents’ counterclaim and allow the action to proceed as undefended.
8. The tenancy was terminated on 22 May 2025. The Respondents did not provide a new address to the Tribunal or the Applicant and there was doubt as to the service of the direction of 14 July 2025.
9. The Applicant employed a tracing agent and established the new address of the Respondents.
10. The Direction of 14 July 2025 was sent to the Respondents at their new address.
11. On 13 January 2026, a Direction was made intimating to the Respondents that, because of their failure to comply with Directions issued by the Tribunal, their counterclaim cannot be advanced and they will be prevented from leading evidence on the condition of the Property.

Hearing

Preliminary Matters

12. A Hearing was held by teleconference on 11 February 2026. The Applicant was present and was represented by Ms Donnelly, solicitor. It was noted that the Applicant was telephoning from Australia and she confirmed that she would be providing evidence on a voluntary basis.
13. It was noted that there was no appearance by the Respondents. Arrangements for the Hearing had been intimated to them on 16 December 2026 and, in addition, the Direction of 13 January 2026 made reference to the date of the Hearing.
14. Ms Donnelly said that she was seeking an order of payment for £7843.82. She said that she was also seeking interest to be applied to the principal sum and she referred to the application where there was reference to a rate of interest of 8%. Ms Donnelly also said that she would be seeking an award of expenses in accordance with Rule 40.

Evidence

15. The Applicant said that she was the sole proprietor of the Property.
16. The tribunal was referred to the rent statement which had been submitted to the Tribunal with the third inventory of productions. This showed the arrears of rent to be £7843.82. The Applicant said that an order of eviction had been granted and that the tenant left the Property on 22 May 2024. She said that the Respondents had handed the keys of the Property to a neighbour and that her son had then collected them. She said that the tenancy deposit of £725 was recovered from the tenancy deposit scheme and was not applied to the rent account because of necessary repairs which had to be carried out to the Property.
17. The Applicant said that the rent arrears had accrued over some time and that the Respondents had not made any payment in reduction of arrears after the tenancy had been terminated. The Respondent said that she had no contact with the Respondents after the termination of the tenancy.
18. The Applicant said that, during the term of the tenancy, some of the rent had been paid from the Respondents' benefits but that this had stopped. The tribunal was referred to the rent statement where the last payment described as "received from housing" was in October 2024. It was noted that the last payment received from the Respondents was the sum of £1400 in February 2025 which had reduced the level of arrears to £5293.82. The rent statement showed that the level of arrears had then increased to £7843.82 as at May 2025.

Submissions

19. Ms Donnelly confirmed that, at the case management discussion, the application was amended to the extent that the sum for which a payment order was sought was changed to £6143.82.
20. Ms Donnelly submitted that it would be appropriate for the Applicant to receive a payment order for £7843.82 which reflected the whole arrears due. She said that an updated rent statement had been sent to the Respondent on 2 February 2026. Ms Donnelly referred to the case management discussion note which stated that the arrears at that time were in excess of £6900. She said that the Respondents would know that they had not paid any rent after that date and would therefore have known that the level of rent arrears would have been increasing.
21. Ms Donnelly referred to the application which stated that the sum of £3909.28 was being sought *“along with any other further sums due from the date of this application to the date an order is made.”* She said that it would have been clear to the Respondents that the Applicant would have been seeking repayment of all the arrears of rent and that they would have knowledge of how much rent was due and unpaid.
22. Ms Donnelly said that the private residential tenancy agreement did not contain a contractual obligation for the Respondents to pay interest in the event of non payment of rent. She said that the application referred to the Applicant seeking interest and she submitted that, in terms of Rule 41A of the Rules, it would be competent for interest to be included in an order of payment.
23. Ms Donnelly said that, in considering the matter of interest, the tribunal should consider the additional burden on the Applicant because the Respondents, having initially engaged with the Tribunal process, had done nothing after the case management discussion to respond to requests made on them to provide defences and other information to support the position stated by them.
24. Ms Donnelly said that the Applicant had not had the benefit of the money which should have been paid to her by the Respondents and that it was appropriate that she receive interest.
25. Ms Donnelly accepted that, if the tribunal did include interest in an order of payment, the rate was at its discretion.
26. Ms Donnelly asked that consideration be given to making an award of expenses and she referred to Rule 40 of the Rules. It was her submission that the Respondents had acted unreasonably and that, as a consequence, the Applicant had been put to unnecessary or unreasonable expense.
27. Ms Donnelly referred to the decision of *Hutchison v Russell* 2023 UT12 and said that the Respondents had exercised their rights at the case management

discussion and had then effectively abused such rights by not complying with the requirements of the Directions.

28. Ms Donnelly said that the Respondents' position at the case management discussion had been clear. Their position was that there were repairs issues affecting their enjoyment and use of the Property. The Respondents had then been required to provide defences and information to support their position and to give fair notice to the Applicant. They had failed to do so despite Directions being made. The Respondents had also failed to provide the Tribunal or the Applicant with their new address when they had moved from the Property. That had caused further delay and expense for the Applicant.

29. Documents before the tribunal

29.1 Copy of the private residential tenancy agreement for the Property dated 21 February 2022 showing the commencement of the tenancy to be 21 February 2022 and the monthly rent to be £850. The tenancy agreement showed the tenant to be the Respondents.

29.2 Copy rent statement to October 2024 showing the rent outstanding to be £3909.28.

29.3 Copy rent statement to March 2025 showing the rent outstanding to be £6143.82

29.4 Copy rent statement to May 2025 showing the rent outstanding to be £7843.82.

Findings in Fact

30.1 The Applicant is the owner of the Property.

30.2 The Applicant and the Respondent entered into a Private Residential Tenancy Agreement for the Property on 21 February 2022

30.3 The start date for the tenancy was 21 February 2022.

30.4 The monthly rent for the Property was £850.

30.5 The Respondent was contractually bound to pay rent to the Applicant.

30.6 The tenancy terminated on 22 May 2025.

30.7 There were rent arrears of £7843.82 on 22 May 2025.

Findings in Fact and Law

31.1 The Respondents are contractually due to pay the sum of £7843.82 to the Applicant and have failed to do so.

31.2 Interest of 4% per annum is to be applied to the sum of £7843.82 from 11 February 2026, until payment.

31.3 The Respondents have conducted their case before the Tribunal in an unreasonable manner which caused unnecessary or unreasonable expense to the Applicant and are obliged to pay her expenses from 11 April 2025, as taxed by the Auditor of the Court of Session.

Discussion and determination

32. The tribunal accepted the written and oral evidence with regard to the rent arrears. The rent statements and the Applicant's evidence was persuasive.

33. The tribunal considered whether it was appropriate to make an order for the whole amount of arrears which was £7843.82. The Respondents were aware at the case management discussion that the level of arrears was in excess of £6900 and it was within their knowledge that the arrears would be increasing because no payment of rent was made by them after the date of the case management discussion. The tribunal determined that the principal sum for the payment order should be £7843.82.

34. The private residential tenancy agreement made no provision for interest on non payment of rent. The matter of interest is discretionary. The tribunal accepted the Applicant's position on the principle of interest being applied, for the reasons set out by Ms Donnelly.

35. The tribunal did not consider that a level of interest at 8 % was reasonable. It determined that 4% would be more in line with market conditions.

36. The tribunal considered the Applicant's submission on expenses and Rule 40 of the Rules.

37. The Applicant had submitted an application for an order of payment on the basis that the Respondents had not paid the rent due. At the case management discussion, the Respondents had indicated that they had a defence, or effectively a counterclaim. Thereafter, they had not engaged with the Tribunal process. They had not provided defences to give fair notice to the Applicant and they had not provided the information requested by the Tribunal in its Directions. The Respondents knew that there was an ongoing Tribunal case and did not intimate their change of address to the Applicant or the Tribunal

administration. The Applicant's solicitors had to engage tracing agents to find the Respondents' address.

38. Ms Donnelly did not provide detail on the additional expense occasioned by the Applicant but, notwithstanding that, the tribunal determined that it was reasonable for it to conclude that she had been put to unnecessary or unreasonable expense in requiring her solicitors to prepare for a case which was going to be defended.
39. In determining issues of expenses, there has to be a balance struck. On the one hand an applicant requires to be able to pursue their claim and, on the other hand, a respondent has to be free to exercise their rights and should be able to do so without fear of an order of expenses being made against them.
40. In *Hutchison v Russell* 2023 UT12, Sheriff Russell stated "*It is important that those parties who decide to exercise their rights in terms of the rules and regulations are not in any way dissuaded from doing so by the prospect of a significant award of expenses being made against them.*" Ms Donnelly referred to this case and said that the actions of the Respondents were such that they chose not to exercise their rights by not engaging with the Tribunal after they had intimated that they had a defence.
41. The tribunal considered the *Hutchison* case and, on balance, determined that an order under Rule 40 should be made, but that it be only for the period after the date of the case management discussion on 11 April 2025. It was after that date that the Respondents failed to properly engage with the Tribunal in what they had intimated was to be a defended application.

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.

**Martin J. McAllister
Legal Member
11 February 2026**