



**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**

**Chamber Ref: FTS/HPC/CV/21/0685**

**Re: Property at 158 Monifieth Avenue, Glasgow, G52 3DJ (“the Property”)**

**Parties:**

**Mr Stephen Lamont, 38 Marchbank Gardens, Paisley, PA1 3DJ (“the Applicant”)**

**Mr Alan Dunn, Ms Ashleigh Smyth, 158 Monifieth Avenue, Glasgow, G52 3DJ; 158 Monifieth Avenue, Glasgow, G52 3DJ (“the Respondents”)**

**Tribunal Members:**

**Petra Hennig-McFatriidge (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order for the amount of £5,350 by the Respondents to the Applicant should be granted.**

**Background and Case Management Discussion**

1. The application for an order for payment of rent arrears under S 71 of the Private Housing (Tenancies) (Scotland) Act 2016 arising from a Private Residential Tenancy Agreement between the parties was made by the on 12 February 2021.
2. The following documents were lodged to support the application:
  - a. Copy tenancy agreement
  - b. Rent statement from 29 August 2019 to 29 January 2021 showing an outstanding amount as at that date of £4,150.
  - c. Note of payment signed by parties dated 13 October 2020
  - d. consent of joint property owner dated 7 April 2021
  - e. Letter Applicant to Respondents dated 28 November 2020 offering payment agreement, sent by recorded delivery

- f. Rent statement Rent statement from 29 August 2019 to 29 March 2021 showing an outstanding amount as at that date of ££5,150 submitted on 7 April 2021
  - g. Rent statement from 29 August 2019 to 29 April 2021 showing an outstanding amount as at that date of £5,650 submitted in the email of 13 May 2021.
  - h. Rent statement from 29 August 2019 to 11 June 2021 showing an outstanding amount as at that date of £5,350 submitted in the email of 16 June 2021 .
3. The application was originally for a payment order in the sum £4,650 and indicated as the Rule applicable Rule 111 of the Procedural Rules.
  4. On 26 May 2021 the Respondent Sheriff Officers served the case papers and the notification for the Case Management Discussion (CMD) on 29 June 2021 on the Respondents. The Tribunal was satisfied that the Respondent had the required notice of the CMD as set out in Rules 17 (2) and 24 (2) of the Procedural Rules.
  5. No representations from the Respondent were received by the Tribunal.
  6. By correspondence of 16 June 2021 the adjusted the sum of arrears to £5,350 and submitted an up to date rent statement for the period up to and including 11 June 2021. This was sent to the Respondent.
  7. The CMD took place on 29 June 2021 by telephone conference call.
  8. Only the Applicant participated.
  9. The Applicant updated the Tribunal advising that the arrears had been reduced to £4,950 by a further payment on 25 June 2021 but that also on 29 June 2021 the next rental payment was due, increasing the outstanding amount to £5,450 as at the date of the CMD. He further advised that the payments and arrears were agreed and that currently the Respondents were paying £400 every fortnight towards rent and arrears to reduce the arrears, however, the arrears were still at the amount of £5.450 and he was seeking to recover that amount.
  10. The Tribunal notes that the Respondent Mr Dunn had telephoned the Tribunal on 21 June 2021 stating he would be submitting an agreed payment plan but that the Respondents had not done so and had not provided an application for a time to pay direction.

### **Findings in Fact:**

1. The property was let on a Private Residential Tenancy Agreement commencing on 29 August 2019.
2. The parties are the landlord and tenant of said Tenancy Agreement.
3. The tenancy is ongoing.
4. The monthly rent for the property is £500 payable in advance on the 29th day of the month (Clause 8).
5. The Respondents rental payments are listed in the rent statement submitted and show that as of 11 June 2021 the arrears were £5,350.
6. Since then a further £500 have become due and a further £400 were paid on 25 June 2021.
7. As at the date of the CMD on 29 June 2021 the rent arrears are £5,450.
8. The Respondents are jointly and severally liable for the payment of the arrears.

## Reasons for Decision:

1. The Tribunal considered that the material facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

(d) discussing what witnesses, documents and other evidence will be required;

(e) discussing whether or not a hearing is required; and

(f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

2. However, in terms of Rule 18 of the Rules of Procedure:

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law, a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

3. The documents lodged are referred to for their terms and held to be incorporated herein.

4. The Tribunal did not consider that there was any need for a hearing as there had been no defence lodged by the Respondent and the application had not been opposed.

5. The Tribunal makes the decision on the basis of the documents lodged by the Applicant and the information given at CMD.

6. The Respondents had fair notice of the representations of the Applicant forming the reasons for the application and the updated arrears statements and had not challenged these. The last amendment of the arrears figure had been made 14 days prior to the CMD in terms of Rule 14A and the Tribunal grants the

amendment to that sum, the Respondents having been aware of the change in the outstanding arrears and not disputing same. .

7. The Tribunal is thus satisfied that the Respondents had entered into a Private Residential Tenancy Agreement with the Applicant for the property with a monthly rental charge of £500 and had failed to make the necessary rental payments as shown in the arrears statements lodged. There had been no payments for March 2020, April 2020, July 2020, November 2020 to April 2021 and only partial payments in August, September and October 2020 and May 2021, leading to arrears of £5,350 as of 11 June 2021. Since then the arrears had increased at the date of the CMD by a further £100 due to a further month rent becoming due and due to a payment of £400 on 26 June 2021 but the Tribunal was unable to allow the amendment to £5,450 as this had not been intimated to the Respondents. The start of non payment of rent was well before the Covid -19 pandemic started. The Tribunal is satisfied that the rent arrears are as set out in the Rent Statement provided in the email of 16 June 2021 as updated by the payment and further month of rental payment due stated by the Applicant at the CMD but restricts the order to the last intimated arrears figure the Respondents had due notice of. The Respondent had not put forward any reason why the rent should not be due.

8. The Tribunal notes that the Respondents have not made any representations in writing to the Tribunal and did not attend the CMD. They were clearly aware of the matter as they did telephone on 21 June 2021 but did not follow up that telephone call with any actual written representations or evidence.

9. As the Tribunal has not received an application for a time to pay direction from the Respondents with the necessary financial information, the Tribunal cannot make a time to pay direction and thus grants the order for the total sum of £5,350. Any enforcement agreements to pay off the outstanding amount between the parties are not a matter for the Tribunal. The Applicant has indicated that he would plan to not enforce the order as long as the Respondents continue to make further payments in accordance with an agreed payment plan.

10. The Applicant is entitled to a payment order for the sum of £5,350 for the rent arrears due up to and including the rent due by 11 June 2021.

**Decision:**

**The Tribunal grants the order for payment of the amount of £5,350 by the Respondents to the Applicant**

**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.**

**Petra Hennig McFatridge  
Legal Member/Chair**

**29 June 2021  
Date**