

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 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016 ('the Act') and Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('the Rules')

Chamber Ref: FTS/HPC/CV/19/0908

**23 Ardmay Crescent, Kings Park, Glasgow G44 4PU
(‘the Property’)**

PARTIES:

Ms Eleanor Jane Strang, c/o 5 St Vincent Place, Glasgow G1 2DH
(‘the Applicant’)

Represented by Miss Kirstie Donnelly, Bannatyne, Kirkwood France, Solicitors, 16 Royal Exchange Square, Glasgow G1 3AG

Ms Maureen-Jessica McGuire, 23 Ardmay Crescent, Kings Park, Glasgow G44 4PU
(‘the Respondent’)

TRIBUNAL:

Joseph C Hughes (Legal Member) [sitting alone]

Audrey Warden (Clerk of Tribunal)

DECISION [In absence of the Respondent]

The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’) determined that the Respondent must pay the Applicant the sum of **ONE THOUSAND EIGHT HUNDRED AND SIX POUNDS AND EIGHTY EIGHT PENCE (£1806.88)** in respect of rent arrears.

The Order for Payment will be issued to the Applicant after expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.

BACKGROUND

1. This is an Application under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('the Rules'). The Applicant is seeking an Order for Payment of unpaid rent under the tenancy agreement between the parties. The Application was accompanied by a copy of the written tenancy agreement with various supporting documents. The Applicant is the Landlord of the Property. The Respondent is the Tenant of the property.

The Legal Member has no conflict of interest in respect of this case.

THE HEARING

2. Miss Kirstie Donnelly from Bannatyne. Kirkwood France, Solicitors attended on behalf of the Applicant. The Respondent did not attend.
3. The case called today as a Case Management Hearing ('CMD'). The Respondent was served with intimation of the CMD and accompanying papers by sheriff officers on 16th April 2019.
4. The Tribunal is satisfied that parties have been notified of the CMD. Parties have been advised that the Tribunal could determine the matter at the CMD if satisfied that it had sufficient information and it was fair to do so. Miss Donnelly intimated that she received a phone call this morning from someone who stated she was previously a 'family friend'. The caller stated she was Rachel Montgomery. She stated that she had visited the property this morning to deposit some parcels. She told Miss Donnelly that she was concerned that the property was insecure. Ms Montgomery stated that she had found the paperwork about the CMD within the property. She further stated that the Respondent was given a prison sentence on 18th April 2019 but was on bail beforehand. Miss Donnelly noted the mobile number of Ms Montgomery in order to make arrangements for the letting agents to secure the property. The Tribunal note that Sandra Mackie, from Harvey Lets (who manage the property for the Applicant) emailed the Respondent and the Guarantor, Mr George Campbell. (understood to be the Respondent's father) on 16th April 2019 at 14.47 hours. This email intimated details about the CMD including date, time and location. A copy of the entry on the Housing and Property Chamber website was included within the said email. Mr Campbell responded to this email on 16th April 2019 at 1650 hours offering to repay the arrears. This offer was withdrawn by a further email from Mr Campbell dated 18th April 2019 at 1547hours. After careful consideration of all matters the Tribunal is satisfied that due intimation of the CMD has been made by sheriff officers on 16th April 2019 on the Respondent.

5. The Tribunal found that the Respondent had entered into the tenancy of the Property by lease commencing 3rd July 2018 with a rent of £600 per calendar month. The amount of arrears now sought is £1901.88 The Applicant lodged updated written evidence of this amended calculation which was accurate up till 12th April 2019. The original Application was sought to be amended in terms of Rule 13(1) (a) of the Rules. Intimation of the amendment was given to the Respondent by the Applicant's solicitors by first class and recorded delivery letters on 16th April 2019. The Tribunal expressed reservations whether the Respondent would have had received intimation of the proposed amended Application if she were incarcerated on 18th April 2019. Miss Donnelly requested to take further instructions on the matter. Miss Donnelly thereafter confirmed that she would restrict the sum sought to the original amount within the original Application, namely £1806.88 together with judicial expenses.
6. In the absence of any contrary evidence, the Tribunal was content to accept the Applicant's evidence regarding the amount of rent arrears outstanding as at the date of the Application.
7. The Tribunal was content to utilise the power contained within Rule 17(5) of the Rules which allows a Tribunal to make a final decision on an Application at a Case Management Discussion.
8. The Tribunal was satisfied that the rent arrears were due and granted the Order for Payment.
9. The Tribunal was satisfied that to grant the Order was in accordance with the interests of justice and the Overriding Objective.

The Tribunal was flexible in its approach to the proceedings.

FINDINGS IN FACT

10.
 - (a) The Respondent had been the Tenant of the Property. The tenancy commenced on 3rd July 2018. The Applicant is the Landlord;
 - (b) The Respondent was legally liable to pay rent as it fell due. The rent was £600 per calendar month;
 - (c) The Respondent has failed to pay all rent due;
 - (d) Arrears have accrued to the amount now sought by the Applicant;
 - (e) The Respondent was served with intimation of the CMD by sheriff officers on 16th April 2019;
 - (f) Respondent is liable for the original arrears claimed, namely £1806.88.

REASONS FOR DECISION

11. The Applicant produced evidence of non-payment of the rent in the form of documentary evidence. The Tribunal was satisfied on the basis of the documentary productions, supporting oral evidence and submissions made on behalf of the Applicant that the Respondent is in arrears of rent restricted to the amount originally sought in the Application. In light of all the information presented the Tribunal elected not to award judicial interest.

DECISION

12. An Order is made for payment of the sum of **ONE THOUSAND EIGHT HUNDRED AND SIX POUNDS AND EIGHTY EIGHT PENCE (£1806.88)** by the Respondent 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.

'Joseph C Hughes'
Legal Member HPC

7th May 2019