



**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/19/1195**

**Re: Property at 121 Wedderburn Street, Dunfermline, Fife, KY11 4SA (“the Property”)**

**Parties:**

**Mr George Astle Murray, c/o 31A North Bridge Street, Bathgate, EH48 4PJ (“the Applicant”)**

**Ms Tracey Patten, formerly residing at 121 Wedderburn Street, Dunfermline, Fife, KY11 4SA and whose current whereabouts are unknown (“the Respondent”)**

**Tribunal Members:**

**Neil Kinnear (Legal Member)**

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

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

This is an application for a payment order dated 15<sup>th</sup> April 2019 and brought in terms of Rule 111 (Application for civil proceedings in relation to a private residential tenancy) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant originally sought in his application payment of arrears in rental payments of £1,230.00 as at the date of the application.

After recovering possession of the Property on 5<sup>th</sup> June 2019 after it was discovered that the Respondent had quit the premises, the Applicant amended this figure in terms of Rule 14A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended to £1,981.39 which is the sum

due until vacant possession was obtained, by e-mail from the Applicant's representative to the Tribunal of 10<sup>th</sup> June 2019.

The Applicant provided with his application copies of the private residential tenancy agreement and rent arrears statement. Thereafter, with his amendment of the sum sought on 10<sup>th</sup> June 2019, he provided an updated rent arrears statement.

The private residential tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*, and the procedures set out in that Act appeared to have been correctly followed and applied.

The Respondent could not be validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal, as she had quit the Property and her current whereabouts are unknown.

Service was validly effected by advertisement in terms of Rule 6A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, and the Tribunal was provided with the Certificate of Service by advertisement.

### **Case Management Discussion**

A Case Management Discussion was held on 8<sup>th</sup> August 2019 at Fife Voluntary Action, 16 East Fergus Place, Kirkcaldy. The Applicant did not appear, but was represented by Miss Donnelly, solicitor. The Respondent did not appear, nor was she represented. The Respondent had not responded to this application at any stage either in writing or by any other form of communication.

Miss Donnelly confirmed that rent was due until 5<sup>th</sup> June 2019, being the date when the Applicant had regained possession of the Property, and referred to the further updated rent arrears statement to that date confirming that rent arrears total £1,981.39.

Miss Donnelly invited the Tribunal with reference to the application and papers to grant an order for payment of the sum of £1,981.39, with interest thereon.

### **Statement of Reasons**

The jurisdiction of the Tribunal in relation to Private Residential Tenancies, such as that which applied to the Property, is set by statute. Section 71(1) of the *Private Housing (Tenancies) (Scotland) Act 2016* provides:

#### **"First-tier Tribunal's jurisdiction**

- (1) In relation to civil proceedings arising from a private residential tenancy—
  - (a) the First-tier Tribunal has whatever competence and jurisdiction a sheriff would have but for paragraph (b),
  - (b) a sheriff does not have competence or jurisdiction.

- (2) For the purposes of subsection (1), civil proceedings are any proceedings other than—
- (a) the prosecution of a criminal offence,
  - (b) any proceedings related to such a prosecution.”

The Tribunal accordingly has jurisdiction to hear civil proceedings arising from a private residential tenancy such as between the parties in this application.

The Tribunal considered the terms of the private residential tenancy agreement, the copy updated rent arrears statement provided, and the submissions made by Miss Donnelly, and was satisfied that these disclosed an outstanding balance of rent arrears in the sum sought of £1,981.39.

The Tribunal and Miss Donnelly calculated that the sum due was in fact £1,981.49, but Miss Donnelly confirmed that she was content to invite the Tribunal to award the slightly lesser sum sought.

Accordingly, the Tribunal will make an order for payment of that sum.

The Applicant also seeks interest on that amount in terms of Rule 41A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

In terms of that rule, the Tribunal may include interest at the rate either stated in the tenancy agreement, or ordered by the Tribunal.

Miss Donnelly confirmed that there is no contractual provision in the lease agreement concerning interest on rent arrears. The legal provisions which apply in the sheriff court to award interest on decrees at the judicial rate of 8% do not apply to the Tribunal. That being so, it is for the Tribunal to order what rate to apply.

In the absence of any guidance on this matter, it appears to the Tribunal to be just to award interest at a rate representing the investment or borrowing rate of lending banks for short term loans, which is currently approximately 3% per annum, and the Tribunal will accordingly do so.

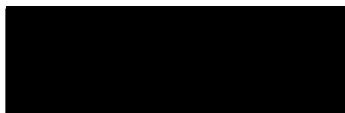
## **Decision**

In these circumstances, the Tribunal will make an order for payment by the Respondent to the Applicant of the sum of £1,981.39, with interest thereon at the rate of three per cent per annum from the date of the decision of the Tribunal until payment.

## **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/Chair**

08/08/19

**Date**