



**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**

**Chamber Ref: FTS/HPC/CV/20/2512**

**Re: Property at 11 Marquis Court, The Stables, Perthshire, PH1 2TW (“the Property”)**

**Parties:**

**Ms Karen Young, C/O 13-15 St Leonard's Bridge, Perth, PH2 0DR (“the Applicant”)**

**Mr Mark Laing, 11 Marquis Court, The Stables, Perthshire, PH1 2TW (“the Respondent”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order in the sum of £7386.43 with interest on this sum at the rate of 3 % per annum from the date of the decision until payment be made, this order being made in favour of the Applicant and against the Respondent.**

**Background**

1.This is an application for a payment order in terms of section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 and in terms of Rule 111 of the Tribunal rules of procedure. The application was first lodged with the Tribunal on 2 December 2020 and was accepted by the tribunal on 17 December 2020. The Tribunal was considering the application alongside a related eviction order application HPC/EV/20/2511. Both applications called for case management discussion on 26 February 2021 at 2 pm and again on 19<sup>th</sup> March 2021 at 10am.

## Discussion

2. Miss Matheson of Bannatyne Kirkwood France and Co Solicitors appeared on behalf of the Applicant at the case management discussions. The Respondent did not attend the case management discussions and was not represented. Miss Matheson moved to proceed in his absence. The Tribunal had sight of a certificate of service by sheriff officer of the application, supporting papers and date of the first case management discussion and these had been served personally on the Respondent on 25 January 2021. The Tribunal was satisfied that the Respondent had been given reasonable notice of the proceedings and was prepared to proceed in his absence on 26<sup>th</sup> February 2021. At the case management discussion on 19<sup>th</sup> March 2021 the Tribunal understood that the date of the continued case management discussion had been intimated on the Respondent by ordinary post and this letter had not been returned. The Tribunal was prepared to proceed again in the absence of the Respondent being satisfied that the rules of procedure had been complied with in respect of notice to parties.

3. At the first case management discussion the Tribunal had sight of the application, a lease agreement, and an updated rent statement along with a request to increase the sum sought by way of a payment order in terms of Rule 14A of the Tribunal rules of procedure.

4. The Tribunal granted the request to amend the sum being sought in the payment order to £7386.43 as this request complied with the requirements of Rule 14A of the procedure rules and had been timeously and properly intimated to the Respondent.

5. The application had been continued to a case management discussion on 19<sup>th</sup> March at 10am in order for the Applicant's representative to provide the Tribunal with more information regarding the question of rent payment by way of benefit.

6. At the second case management discussion the Tribunal had sight of an updated rent arrears schedule, another application to increase the sum being sought in respect of a payment order, and email intimating the request to the Respondent as well as an email from Universal Credit dated in May 2020, intimating that it would be making direct payments towards the rent. The Tribunal required to consider whether it should have regard to these additional documents as recorded delivery intimation of these documents by the Tribunal to the Respondent had failed, the letter being returned marked 'not called for'. After consideration of the matter the Tribunal decided it could take account of these documents given that these were simply intimations of information already sent to the Respondent by the Applicant's representative or the DWP. The Tribunal noted that its attempt to intimate these documents to the Respondent had failed because he had not called for the recorded delivery letter. The Tribunal took the view that the Respondent had simply chosen not to engage with the Tribunal and its proceedings.

7. Miss Matheson accepted that this second request to increase the sum being sought by way of a payment order had been intimated on the Respondent less than 14 days before the date of the case management discussion. Her position was that the

Respondent had had fair notice in all the circumstances and given the background to matters.

8.The Tribunal considered the terms of Rule 14A of the Tribunal rules of procedure and took the view that a notice period of at least 14 days was required in terms of the rule. The Tribunal therefore refused this second request to amend the sum being sought by way of a payment order. Miss Matheson requested a short adjournment to take instructions and this was granted.

9.After the adjournment Miss Matheson indicated that she wished to proceed to seek a payment order in the sum of £7386.43, the amount to which the sum being sought had been increased at the first case management discussion.

10.Miss Matheson moved the Tribunal to grant a payment order for the sum of £7386.43.She pointed to the updated statement of arrears which showed that rent arrears at the property had started to accrue from the start of 2020.Rent for January 2020 had ultimately been paid in early February 2020.

11.Two payments had been made towards the increasing rent arrears in the period between February 2020 and February 2021. These payments totalled £88.57 and had been paid direct by universal credit.

12.Miss Matheson advised the Tribunal at the second case management discussion on 19<sup>th</sup> March that the Respondent was believed to be working at premises called the Caledonia bar. It was not known what position he held at the premises, where the premises are located and if he was in receipt of any income from that employment given the current coronavirus restrictions.

13.She advised the Tribunal of a number of attempts to engage with the Respondent in respect of the arrears. He had advised the Applicant's representative that he was making a claim for universal credit. There had been little other engagement by him in relation to the rent arrears despite a number of requests to do that. There was no suggestion that the rent arrears had accrued due to a failure or delay in any payment of a relevant benefit. At an early stage when the applicant's representatives had tried to engage with the Respondent regarding arrears of rent he had said that there were repairs outstanding and the rent would not be paid. Miss Matheson's position was that this had taken place before the service of a notice to leave to property served in May 2020 and all necessary repairs had been carried out but no further rent had been paid by him.

14.Miss Matheson initially sought a payment order with interest at a rate which could be fixed by the Tribunal to reflect the use value of the outstanding amount by way of rent arrears. She then referred the Tribunal to the terms of the tenancy agreement lodged at page 6 of the agreement in paragraph 8 with the heading 'Rent' . She referred to paragraph 6 of that section which indicated that interest on late payment of rent "may" be charged by the landlord at 8% per year from the date on which the rent is due until payment is made. Miss Matheson accepted that this clause suggested that the addition of interest at the rate of 8% was discretionary on the part of the landlord

and that the rent arrears schedules lodged made no mention of any addition of this rate of interest to the outstanding arrears. She further accepted that the application to the Tribunal had simply made a request for a payment order together with interest and had made no reference to any contractual rate which had been set out in the tenancy agreement. Having considered matters the Tribunal was not minded to consider the addition of this contractual rate of interest not having been satisfied that the Respondent had had fair notice of this both in terms of the dealings between the Applicant and the Respondent and indeed the application to the Tribunal. Miss Matheson then renewed her motion for an order with addition of interest at a rate to be specified by the Tribunal to reflect the use value of the outstanding amount.

15. The Tribunal granted a payment order in the sum of £7386.43 with interest at the rate of 3% per year.

### **Findings in Fact**

16. The parties entered into a private residential tenancy at the property with effect from 20 February 2019.

17. The monthly rent payable in respect of the property is £575 per month.

18. Rent arrears start to accrue at the property from January 2020.

19. Rent was paid for January 2020 but since early in February 2020 no rent has been paid directly by Respondent to the Applicant in relation to the property.

20. Since July 2020 the only payments towards rent have been made to the Applicant directly from universal credit in the sum of £88.57.

21. As of February 2021 rent arrears at the property stand at £7386.43

22. No information before the Tribunal suggests that rent arrears have accrued as a result of any failure or delay in the payment of a relevant benefit.

23. A number of attempts by representatives of the Applicant to engage with the Respondent to discuss the question of rent arrears have been unsuccessful.

24. As of January 2021 the Applicant understands that the Respondent is employed.

25. The sum of £7386.43 is lawfully due by the Respondent to the Applicant in respect of unpaid rent for the property.

### **Reasons for Decision**

26. The Tribunal was satisfied that substantial rent arrears have accrued at the property and are owed by the Respondent to the Applicant. Two payments had been made direct by universal credit of relatively small sums and at no stage had the Respondent properly engaged with the Applicant to discuss the arrears. There was no suggestion that he had fallen into arrears due to any difficulty with benefit payments. The latest information which the Applicant has suggests that the Respondent is employed. In all of the circumstances it appeared reasonable to make a payment order for the sum requested.

27. The Tribunal was requested to make a payment order with interest and made the order with the addition of interest at the rate of 3% per annum from the date of the order until payment. This interest-rate was chosen as it reflects the use value of the outstanding monies and is similar to current interest rates charged by lending institutions in respect of short-term loans.

## **Decision**

The Tribunal made a payment order in the sum of £7386.43 with interest on this sum at the rate of 3 % per annum from the date of the decision until payment be made, this order being made in favour of the Applicant and against the Respondent.

## **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.**

V. Bremner

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**Legal Member/Chair**

**Date** 19.3.21\_\_\_\_\_