



**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)**

**Chamber Ref: FTS/HPC/CV/18/3332**

**Re: 5 Argyll Street, Lochgilphead, Argyll, PA31 8LZ (“the property”)**

**Parties:**

**Mrs Mary Michie, Old Manse, Onich, Inverness-shire, PH33 6RY  
 (“the applicant”)**

**Mr Donald Michie, Old Manse, Onich, Inverness-shire, PH33 6RY  
 (“the applicant’s representative”)**

**Ms Jodie Fyfe, 5 Argyll Street, Lochgilphead, Argyll, PA31 8LZ  
 (“the respondent”)**

**Tribunal Members:**

**Adrian Stalker (Legal Member) and Elaine Munroe (Ordinary Member)**

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

**The Tribunal made an order for payment, by the respondent to the applicant, in the sum of £5,460.**

**Reasons for decision**

**Background**

1. This is an application under rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Procedure Regulations”).

The applicant and the applicant's representative, who are spouses, are the owners of the property, 5 Argyll Street, Lochgilphead, Argyll. On 24 May 2017, the property was let to the respondent at a monthly rent of £600.

2. In terms of an application received by the Tribunal on 1 December 2018, the applicant sought an order for payment of rent arrears.

3. On 15 February 2019, a Case Management Discussion ("CMD") took place, before Jan Todd, a legal member of the Tribunal. Reference is made to her decision. Mr Michie and the respondent were present at the CMD. In essence, Ms Todd took the respondent to be arguing that she was entitled to withhold rent, or to seek an abatement, because of disrepair at the property. She continued the case to a hearing at 14:00 on 3 April. She noted that parties were agreed that the unpaid rent as at 15 February stood at £3,410.

4. The hearing of 3 April was adjourned, to a date to be appointed. Again, Mr Michie and the respondent were present at the hearing. As at 3 April, the unpaid rent stood at £4,610. Reference is made to the Tribunal's decision dated 24 April, in relation to that hearing. For present purposes, it may be noted that, in that decision, the Tribunal said, at paragraph 26:

26. In this case, there is no dispute that the rent is due to the landlord, if it is the case that there is no breach of contract on her part. Therefore, the onus falls on the respondent to show:

- The specific repairs which are required at the property
- The date(s) (or approximate date(s)) when the need for each of those repairs was brought to the attention of the landlord or Mr Michie.
- The effect on her of Mr Michie's failure to address the repairs, in order that the appropriate level of any abatement may be sought.

The Tribunal would expect that any abatement would be expressed as a percentage of the rent, over the period of time during which the landlord was in breach.

5. In view of the above statement, the Tribunal also made a direction to the parties in the following terms:

...the Tribunal directs both parties, under rule 16, to lodge written representations indicating:

- The specific repairs that are currently required at the property;
- The date(s) (or approximate date(s)) when the need for each of those repairs was brought to the attention of the landlord or her representative Mr Michie.

Furthermore, the respondent is directed to include, in her written representations:

- A statement of the effect on her of the applicant's failure to address any disrepair issue.

Both parties are also directed to specify what evidence they intend to lead, apart from their own evidence, in the form of letters or statements from witnesses (including contractors instructed by either party), which support their positions on those points. They are also directed to confirm whether they intend that any of those witnesses will give evidence at the hearing.

The Tribunal directs the parties comply with these directions within 21 days of the date of this decision.

6. The applicant and Mr Michie provided certain information in response to the direction. The respondent did not.

#### Hearing on 19 June 2019

7. A further hearing took place at 10am on 19 June 2019, at the Community Centre, Manse Brae, Lochgilphead. The applicant and Mr Michie, were in attendance. The respondent did not attend, and was not represented.

8. In these circumstances, it was apparent that the respondent did not intend to offer any proof in relation to disrepair at the property, and could not discharge the onus described at paragraph 26 of the Tribunal's previous decision.

9. Under rule 29, the Tribunal was satisfied that the requirements of rule 24(1) regarding the giving of notice of a hearing have been duly complied with. It decided to proceed with the application upon the representations of the party present (the applicant) and all the material before it. It did so because the respondent was aware of hearing, had not complied with the previous direction, and had made no contact with the Tribunal to explain why she would not be in attendance.

10. The applicant sought an order for the current balance due on 19 June 2019. She produced a rental statement showing that, since the last hearing, the respondent made three payments, totalling £350, during the course of April. Since then, no payments have been made. Two further rental payment of £600 had fallen due. Accordingly, the balance, as at 19 June 2019, stood at £5,460.

11. The Tribunal decided to grant an order for payment in that amount. At the previous CMD and hearing, the respondent was present, and did not dispute the level of rent said to be unpaid, by the applicant and Mr Michie. The Tribunal was aware, from email correspondence from Mr Michie, that copies of the rent account were regularly sent to the respondent, including the most recent account. In the circumstances, the Tribunal considered that the respondent had had fair notice that an order for payment of the current outstanding balance would be sought, at the hearing on 19 June. It was also satisfied, on hearing the applicant and Mr Michie, that the true balance was £5,460.

### Decision

12. The Tribunal therefore found, in fact and in law, that the applicant was entitled to payment from the respondent of rent arrears in the total sum of £5,460. It accordingly granted an order for payment in that sum.

### **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.**

	A.Stalker
Signed	
Date	19 June 2019