



**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/19/3535**

**Re: Property at 25 Thornyflat Place, Ayr, KA8 0NE (“the Property”)**

**Parties:**

**Mrs Eilidh Goodwin, 32 Marlepark, Ayr, KA7 4RN (“the Applicant”)**

**Mrs Stacie Barclay, 25 Thornyflat Place, Ayr, KA8 0NE (“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**

**Background**

This is an application for a payment order dated 22<sup>nd</sup> October 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 sought in her application payment of arrears in rental payments of £3,000.00 as at the date of the application.

The Applicant provided with her application copies of the private residential tenancy agreement and 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 had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 27<sup>th</sup> November 2019, and the Tribunal was provided with the execution of service.

### **Case Management Discussion**

A Case Management Discussion was held on 8<sup>th</sup> January 2020 at Russell House, King Street, Ayr. The Applicant did not appear, but was represented by Mr Fraser, solicitor. The Respondent did not appear, nor was she represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

Mr Fraser observed that the rent arrears outstanding as at today's date had increased from the figure stated in the original application form, and asked the Tribunal whether it could grant an order today for that higher sum.

The Tribunal explained that it considered that it could not properly grant an order today against the Respondent in her absence for a sum which is more than that sought in the application form.

The Tribunal explained that the Applicant could either seek an order for the sum sought in the application and thereafter bring a further application for further sums of rental which were outstanding, or alternatively, the Applicant was allowed to request an adjournment of the Case Management Discussion in order to allow her to amend her application in terms of Rules 14A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended to the greater sum which she would be seeking.

In terms of Rule 14A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, a request to amend the application must be intimated to the Tribunal and to the Respondent at least 14 days prior to a Case Management Discussion.

Mr Fraser, after considering matters, invited the Tribunal with reference to the application and papers to make an order for payment of the sum of £3,000 today. He confirmed that no further payment has been received from the Respondent since the date of the application.

### **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 rent arrears statement provided, and the submissions made by Mr Fraser, and was satisfied that these disclosed an outstanding balance of rent arrears as at the date of submission of this application of the sum sought of £3,000.00, which sum remains outstanding.

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

### **Decision**

In these circumstances, the Tribunal will make an order for payment by the Respondent to the Applicant of the sum of £3,000.00.

### **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.**

Neil Kinnear

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**Legal Member/Chair**

08/01/20

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**Date**