



**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/19/1812**

**Re: Property at 194 Redcraigs, Kirkcaldy, KY2 6UG (“the Property”)**

**Parties:**

**Ms Andrewina Kennedy, 47 Duddingston Drive, Kirkcaldy, KY2 6JR (“the Applicant”)**

**Mr Paul Young, formerly residing at 194 Redcraigs, Kirkcaldy, KY2 6UG 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**

**Background**

This is an application for a payment order dated 10<sup>th</sup> June 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 her application payment of arrears in rental payments of £2,625.00 as at the date of the application.

After recovering possession of the Property on 10<sup>th</sup> July 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 £2,832.12 which is the sum

due until vacant possession was obtained, by e-mail from the Applicant's representative to the Tribunal of 19<sup>th</sup> July 2019.

The Applicant provided with her application copies of the private residential tenancy agreement and rent arrears statement. Thereafter, with her amendment of the sum sought on 19<sup>th</sup> July 2019, she 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 he had quit the Property and his 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 20<sup>th</sup> September 2019 at Fife Voluntary Action, 16 East Fergus Place, Kirkcaldy. The Applicant did not appear, but was represented by Miss Morrison, solicitor. The Respondent did not appear, nor was he represented. The Respondent had not responded to this application at any stage either in writing or by any other form of communication.

Miss Morrison confirmed that rent was due until 10<sup>th</sup> July 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 £2,832.12.

Miss Morrison confirmed that since the amendment of the sum sought to that figure, the Applicant has obtained payment of the deposit from the tenancy deposit scheme, and that figure of £525.00 accordingly should be deducted from the sum sought.

Miss Morrison invited the Tribunal with reference to the application and papers to grant an order for payment of the sum of £2,307.12, being the rent arrears figure under deduction of the deposit.

### **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 Morrison, and was satisfied that these disclosed an outstanding balance due in the sum sought of £2,307.12.

Accordingly, the Tribunal will 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 £2,307.12.

**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.**

**N Kinnear**

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Legal Member/Chair

20/09/19

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Date