

**Housing and Property Chamber**  
First-tier Tribunal for Scotland



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) and Rule 70 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules)**

**Chamber Ref: FTS/HPC/CV/19/3825**

**Re: Property at 17 Newtongrange Place, Newtongrange, Edinburgh, EH12 5LR (“the Property”)**

**Parties:**

**Mr Iain Gaul and Mrs Fiona Gaul, 5 Wester Coates Terrace, Edinburgh, EH12 5LR (“the Applicants”)**

**Bannatyne, Kirkwood, France & Co, Solicitors, 16 Royal Exchange Square, Glasgow, G1 3AG (“the Applicants’ Representative”)**

**Mr Jamie Gilchrist and Ms Shelley Forman, 17 Newtongrange Place, Newtongrange, Edinburgh, EH22 4DF (“the Respondents”)**

**Tribunal Members:**

**Susanne L. M. Tanner Q.C. (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondents should pay the Applicants the sum of NINE THOUSAND POUNDS (£9,000.00) STERLING; and made an Order for Payment in respect of the said sum; together with interest from the date of the decision at three per cent per year**

## STATEMENT OF REASONS

### 1. Procedural Background

1.1. The Applicants' Representative made an Application to the tribunal on 28 November 2019 in terms of Section 16 of the 2014 Act and Rule 70 of the 2017 Rules, seeking an order for payment against the Respondent in the sum of £6750.00 in respect of rent arrears, together with interest from the date of the decision.

1.2. The documentation with the Application comprised:

1.2.1. A paper apart for Ground 5 to the Application;

1.2.2. a copy of a tenancy agreement dated 25 July 2009;

1.2.3. a copy of an AT2 Notice to each Respondent dated 6 March 2019, with proof of service dated 7 March 2019;

1.2.4. A copy of a payment order (case reference CV/18/2695) for £2,480.00 made by the tribunal in relation to the same Applicants, Respondents and Property dated 15 August 2019;

1.1. On 3 December 2019, the tribunal's administration obtained the title deeds for the Property (MID44748) which show that the Applicants have been the joint registered proprietors since 15 July 2003.

1.2. On 11 December 2019, the Application was accepted for determination by a tribunal. Both parties were notified by letters dated 3 January 2020 of the date, time and place of Case Management Discussion ("CMD") in relation to the Application on 3 February 2020. The Respondents were invited to make written representations in response to the Application by 24 January 2020. Both parties were advised that they were required to attend the CMD. The parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application which may involve making or refusing an eviction order. The parties were also advised that if they do not attend the CMD this will not stop a decision or order being made if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair. The Application paperwork and notification was served on the Respondent by Sheriff Officers on 3 December 2019.

1.3. The Respondents did not submit any written representations in response to the Application.

- 1.4. On 16 January 2020, the Applicants' Representative submitted an updated rent statement for the period to 9 January 2020, a copy of which was sent by the tribunal to the Respondents.
- 1.5. The Applicants' Representative made an application to amend the sum sought to £9,000.00 to reflect the current arrears of £11,480, less the amount of £2480.00 in the tribunal's previous payment order; plus interest from the date of the decision.

**2. Case Management Discussion ("CMD"): 3 February 2020, 1400h, Riverside House, 2<sup>nd</sup> Floor, 502 Gorgie Road, Edinburgh, EH22 4DF**

- 2.1. The First Respondent contacted the tribunal's administration at 13.55h on 3 February 2020 to say that he was suffering from a dental emergency which had started shortly before he had planned to leave to attend the CMD and that he was now unable to attend the CMD. He said that his wife, the Second Respondent, had to stay at home to look after their children. The First Respondent was asked by a member of the tribunal's administration staff to submit the information about his and his wife's inability to attend in writing. Following a query from a member of the tribunal's administration staff, the First Respondent confirmed that he and his wife were not requesting a postponement of the CMD, stating he and his wife were in the process of moving out of the Property in any event.
- 2.2. Kirsty Donnelly, Solicitor, from the Applicant's Representative attended the CMD.
- 2.3. The tribunal was satisfied that the requirements of Rule 24 of the 2017 Rules regarding the giving of notice of a hearing have been duly complied with and decided to proceed with the application upon the representations of the party present and all the material before it, in terms of Rule 29 of the 2017 Rules.
- 2.4. The tribunal Chair informed Ms O'Donnell of the contact which had been received from the First Respondent and invited any submissions she wished to make in relation to a postponement of the CMD.
- 2.5. Ms O'Donnell stated that she was inviting the tribunal to proceed in the Respondents' absence. She stated that in relation to their stated intention to move, the Respondents have been advising for about one and a half years that they are going to move out. She referred to text message correspondence up until 30 December 2019. The Applicants also received a letter from the local authority stating that they were responsible for Council Tax again because the Applicants moved out of the Property on 6 January 2020. The Applicants

contacted the Council and were advised that the tenants had informed the council tax department that that they were moving out on 6 January 2020. The Applicants have advised the local authority that the Respondents are still in the Property.

2.6. Having heard from Ms O'Donnell and considering the statements made by the First Respondent to the tribunal's administration, as well as the overriding objective of the tribunal, the tribunal Chair decided not to adjourn the CMD.

2.7. The tribunal Chair explained the purpose of the CMD in terms of Rule 17 of the 2017 Rules. The tribunal Chair also informed Ms O'Donnell that if any decision was reached in the absence of the Respondents, there was the possibility of an application for recall but only if the Respondents stated why it was in the interests of justice and the application otherwise complied with Rule 30.

2.8. The tribunal chair allowed the Applicants' Representative to amend the application to seek the sum of £9,000.00, plus interest from the date of the decision.

## **2.9. Applicants' representative's submissions**

2.10. Ms O'Donnell stated that she was inviting the tribunal to make a payment order against the Respondents for £9000.00 plus interest from the date of the decision.

2.11. Ms O'Donnell stated that the rent was initially £845.00 pcm from the start date of 9 July 2009. It was increased in accordance with statutory provisions from 9 May 2019 to £1125.00pcm. After the increase, there was one payment at the higher rate. Since then there have been no further payments made by the Respondents.

2.12. The previous payment order of £2480.00 was made in respect of rent arrears to 9 May 2019. The current rent arrears are £11,480.00. The balance under deduction of the sum in the previous payment order is £9,000.00.

2.13. In respect of interest, there is no contractual rate in the tenancy agreement. Ms O'Donnell suggested 3 per cent per year on the basis that that reflects the use value of money and takes account of prejudice that applicants will suffer in recovering the sums due.

2. The tribunal makes the following findings-in-fact:

- 2.1. The Applicants became the registered proprietors of the Property on 15 July 2003.
- 2.2. There is a short assured tenancy between the Applicants and the Respondents for the Property dated 25 July 2009.
- 2.3. The date of entry was 9 July 2009.
- 2.4. The initial end date was 8 January 2010 and the tenancy has continued by tacit relocation on a monthly basis since then.
- 2.5. Rent was payable by the Respondents to the Applicants in the sum of £845.00 per calendar month, monthly in advance, on 9<sup>th</sup> of each month.
- 2.6. The rent was increased to £1,125.00 per calendar month with effect from 9 May 2019.
- 2.7. On 15 August 2019 the tribunal made a decision in a civil application CV/18/2965 by the Applicants against the Respondents and made a payment order for £2,480.00 in respect of rent arrears to 9 May 2019.
- 2.8. Rent arrears have continued to accrue in the period from 9 May 2019 to 3 February 2020.
- 2.9. As at the date of the hearing on 3 February 2020, there were rent arrears of £11,480.00.
- 2.10. The rent arrears as at 3 February 2020 include £2,480.00 to 9 May 2019 and a further £9,000.00 of arrears which have accrued in the period to 3 February 2020.
- 2.11. The amount of rent arrears lawfully due by the Respondents to the Applicants after deduction of the sum in the previous order for payment is £9000.00.

**3. Decision**

- 3.1. The tribunal determined on the basis of the Application (including supporting documents) and the oral representations made on behalf of the Applicant; and in the absence of written or oral submissions from the Respondent; that the Applicants had proved that the Respondents owe the Applicants the amended sum of £9,000.00 sought on behalf of the Applicants (in addition to the £2480.00 in the tribunal's payment order of 15 August 2019) and made an order for payment by the Respondents to the Applicants for £9,000.00. The tribunal decided to award interest from the date of the decision and determined that three per cent per annum was an appropriate rate in the circumstances,

taking into account the use value of money and the prejudice suffered by the Respondents in having to recover the sum sought.

### **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.**

**S. Tanner**

**3 February 2020**

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**Susanne L. M. Tanner Q.C.**  
**Legal Member/Chair**