



**Statement of Decision under Rule 39 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 in relation to an application for review of its Decision dated 27 June 2019**

**Chamber Ref: FTS/HPC/CV/18/2965**

**Re: Property at 17 Newtongrange Place, Newtongrange, EH22 4DF (“the Property”)**

**Parties:**

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

**Mr Jamie Gilchrist, Ms Shelley Foreman, 17 Newtongrange Place, Newtongrange, EH22 4DF (“the Respondent”)**

**Tribunal Members:**

**Lesley Johnston (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) considered the request for review submitted by the Applicants and decided it was in the interests of justice to review the decision. The Tribunal decided to issue a decision of new granting an order for payment to the Applicant in the sum of £2,480.**

**Background**

The Tribunal considered an application by the Applicant submitted in terms of section 16 of the Housing (Scotland) Act 2014 at a hearing on 22 May 2019. The parties were present at the hearing, but not represented.

At the hearing on 22 May 2019 the Respondents accepted that there were rent arrears due to be paid to the Applicants, but that they were not in a position to provide evidence to challenge the level of arrears said to be due to be paid.



The Tribunal determined that there were arrears lawfully due to be paid, the arrears having arisen in 2010 and 2011.

The Tribunal determined that the level of arrears due to be paid by the Respondents to the Applicants amounted to £1,645. The Tribunal's reasoning is set out in its decision dated 27 June 2019.

The application for an Order for Payment was heard together with a separate application by the Applicants for an Order for Possession of rent arrears (Tribunal ref: FTS/EV/18/2964). The Tribunal refused the Order for Possession.

### **Request for Review of Decision**

By email and letter dated 11 July, the Applicants requested a review of the decision requesting that the level of the arrears and consequently the Order for Payment be reviewed to increase both to the sum of £2,480. The Applicants also sought a review of the decision to refuse the Order for Possession. A separate review decision is issued in that regard.

The letter from the Applicants advises that:

*"Within item 39 of the Reasons for Decision, the Tribunal correctly states the Respondents paid the applicants on £845 on 11 February 2019 but incorrectly states that this reduced the arrears to £1,635 as a rental payment was due on 9 February 2019 with the result that the arrears remained at £2,480 (Between 9 and 11 the arrears increased to £3,325).*

*Within items 40 to 43 of the Reasons for Decision, the Tribunal has incorrectly recorded that the arrears amounts to £1,635.*

*At the hearing on 22 May the respondent was asked by the chair if there had been any attempts to pay the arrears in rent to which he responded no. There is no record of this response within the notes which accompanied the Tribunal's determination."*

By email of the same date the Applicants also advised as follows:

*"Since the hearing, no rent has been received from our tenants resulting in the rent arrears increasing from £2,480 to £4,730 (no rent has been received in June and July) and neither have they paid any of the arrears. There has been no communication from them despite numerous attempts to contact them. This is a big problem for us and we would therefore be grateful if these decisions are reviewed at the earliest convenience."*

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



On 24 July 2019 the Tribunal issued correspondence to the parties in respect of this application and in terms of rule 39 as follows:

*"The Tribunal has considered the Applicants' request for a review in terms of Rule 39. The application for review is made in respect of both the decision in relation to civil proceedings (rent arrears) (CV/18/2965) and the decision in relation to eviction (EV/18/2964).*

*In accordance with Rule 39(4), the Tribunal invites the Respondents 7 days in which to provide any response to the applications.*

*In terms of Rule 39(4) of the Tribunal rules, at its discretion the Tribunal may set out its provisional view on the application(s).*

*The Tribunal's provisional view is as follows:*

*1. In respect of the application for review of the decision relating to civil proceedings, the Tribunal is of the provisional view that the decision should be reviewed to increase the sum due for payment by the Respondents to the Applicants to £2,480 in respect that only one additional payment towards the arrears was made in January 2019 (£800), the other payments on 2 January and 23 January 2019 relating to rent due to be paid by the Respondents in respect of the ongoing rent account.*

[...]

*The Tribunal also invites both parties to provide their view, within 7 days, on whether the application can be determined without a hearing."*

By email dated 31 July 2019 the Respondents responded to the request for a review of this decision as follows:

*"1. We both agree and do not resist that the amount should be amended to reflect the sum of £2,480. We understand this was a clerical issue."*

By letter dated 2 August the Applicants confirmed that the review request could be considered by the Tribunal without a hearing. The Applicants reiterated the points for review set out in their letter dated 11 July 2019.

The Tribunal decided that, in accordance with Rule 18, the matter could be determined without a hearing as the Respondents were in agreement with the request that the order for payment should be amended to the increased sum of £2,480; sufficient findings could be made to determine the case; and to do so will not be contrary to the interests of the parties.

The Tribunal considered matters in terms of section 43 of the Tribunals (Scotland) Act 2014 and Rule 39 of the Rules and determined that a review of the decision was necessary in the interests of justice for the following reasons:



1. The Tribunal has made a clerical error in the calculation of rent arrears.
2. At paragraph 39 of its decision, the Tribunal wrongly determined that the payments made by the Respondents on 22 and 23 January were “further additional payments”. In fact, the payment on 22 January 2019 amounting to £800 was an “additional payment” over and above the usual monthly rent paid by the Respondents. The payment on 23 January 2019 in the sum of £845 was a regular monthly payment of rent due to be paid by the Respondents. The payment on 23 January 2019 was not therefore an additional payment.
3. Since the level of arrears reverted to £4,125 on 9 January 2019 (when rent became due), the payments made by the Respondents in January reduced the level of arrears to £2,480 as at 23 January 2019 (rather than £1,635).
4. The level of rent due to be paid increased to £3,325 on the 9 February 2019. The Respondents paid the Applicants £845 on 11 February 2019 reducing the arrears to £2,480.
5. On 9 March 2019 the arrears reverted to £3,325. The Respondents paid the Applicants £845 on 11 March 2019 reducing the arrears to £2,480.
6. On 9 April the arrears reverted on £3,325. The Respondents paid £845 on the same date, thereby reducing the arrears to £2,480.

The sum of £2,480 is due by the Respondents to the Applicants in respect of unpaid rent which is lawfully due. The Respondents do not dispute that the level of the arrears lawfully due to be paid are £2,480. Accordingly, the Tribunal grants the application for review to increase the Order for Payment from £1,635 to £2,480 and grants an Order for Payment of new in the sum of £2,480.

In reaching this decision, the Tribunal has left out of account the Applicants’ submission as to the Respondents’ non-payment of rent since the date of the hearing. Any new rent arrears incurred would require to be the subject of a new application and are irrelevant to the determination of this application for Review.

**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.**

Housing and Property Chamber  
First-tier Tribunal for Scotland

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Legal Member/Chair

15/8/19

Date