



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing Tenancies) (Scotland ) Act 2016**

**Chamber Ref: FTS/HPC/CV/23/0413**

**Re: Property at 91 Lomond Place, Irvine, KA12 9PF (“the Property”)**

**Parties:**

**Mrs Una Fitzgerald, 115 Haypark Avenue, Belfast, BT7 3FG (“the Applicant”)**

**Mr Sean Stewart, 91 Lomond Place, Irvine, KA12 9PF (“the Respondent”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order be granted in favour of the Applicant and against the Respondent in the sum of Three Thousand Five Hundred and Two Pounds and Twenty-Six Pence Only ( £3502.26).**

**Background**

1. This application for a for payment order in terms of Rule 111 of the tribunal rules of procedure was first lodged with the tribunal on 7th February 2023 and accepted by the tribunal on 30th March 2023. A case management discussion was fixed for the 25th of May 2023 at 2:00 pm.

**Case Management Discussion**

2. The Applicant did not attend the case management discussion but was represented by Mr Craig Scott of RentoLease, the firm who are Letting Agents in terms of the tenancy agreement. The Respondent did not attend the case management discussion, nor was he represented. The tribunal Legal Member had sight of an execution of service of the application, supporting papers and the date of the case management

discussion all of which had been served on the Respondent by sheriff officers posting these through the letter box at the property on 20th of April 2023. The tribunal Legal Member was therefore satisfied that the Respondent had received fair notice of the application and case management discussion and that the case management discussion could proceed in his absence.

3. Mr. Scott confirmed that the property was jointly owned but the Applicant, one of the property owners had acted as the landlord in terms of the tenancy and was authorised to rent out the property and to seek to recover rent arrears on behalf of both of the owners. Mr. Scott was authorised to act on behalf of both of the property owners and therefore could confirm this to the Tribunal.

4. The tribunal had sight of the application, a private residential tenancy agreement, a rent balance statement, and a mandate authorising Mr Scott to act on behalf of the property owners, one of whom was the landlord in terms of the agreement and Applicant in the application.

5. Mr Scott advised that the parties had entered into a private residential tenancy agreement to the property with effect from the 17th of December 2021. Monthly rent payable in advance in terms of the agreement is £500. Mr. Scott advised that the Respondent had started to be behind with the rent early on in the tenancy but had made payments and brought matters up to date. However, nothing at all had been paid since the end of July 2022 towards the rent. When the Respondent had been approached about this, he indicated that he had either been changing jobs and there had been a problem with his wages being paid or he indicated that the fact that his ex-partner was no longer at the property had affected his ability to pay the rent. Mr. Scott said that the Respondent had made no effort to make any contributions or to seek assistance in payment of the rent. The arrears as at the date of the application which take account of the rent due for February 2023 stood at £3502.26.

6. The tribunal had sight of a rent balance statement which appeared to show a payment for the majority of the rent in the months when the rent was paid and then a small payment each month of £2.26. Mr. Scott explained that these payments in fact came in on the same day and represented the rent being paid (in the months when it was paid) and it was simply his firm's system which allocated monies to different rental periods. This he said did not alter the total sum due. The sum due was not a round figure he said because the tenancy had started on the 17th of the month, but the Respondent had changed his payment date, and this meant that in terms of the arrears there was a partial period of a month due, and this was reflected in the entry in the rent balance statement for February of 2022.

7. Mr. Scott advised the tribunal that a number of promises had been made by the Respondent to pay off the rent arrears He had promised double payment one month or £200 pounds on top of the rent another month, but none of his promises had been fulfilled. Mr. Scott was certain that the Respondent is working as every time they spoke, he referred to his work and Mr Scott had seen a works van near to the property. Although he didn't know exactly the nature of the Respondent's employment Mr Scott believed that he was working away from home. It was understood that the Respondent stayed the property alone although he had hinted to Mr Scott in conversation that his ex-partner from time to time was back at the property. When Mr. Scott had last spoken

to the Respondent he said he was barely at the property. Mr. Scott had signposted him to local help agencies and the Respondent always said he would look into it but apparently never did. Mr. Scott advised that a Notice to Leave the property had been served on the Respondent and it was known that he had spoken to the local council about being rehomed and it was understood that he might be next on a list to obtain a council property. In conversation with the Respondent Mr. Scott had been told by him that the Respondent intended to leave the property as soon as the week beginning 28th May 2023.

8. The Tribunal Legal Member was satisfied that there was sufficient information before the Tribunal to allow a decision to be made and that the proceedings had been fair.

### **Findings in Fact**

9. The Applicant is a joint owner of the property and was authorised by the other owner of the property to enter into a private residential tenancy agreement with the Respondent at the property with effect from 17th of December 2021.

10. In terms of that tenancy agreement the monthly rent payable in advance is £500 per month.

11. No rent has been paid by on behalf of the Respondent since July of 2022.

12. Letting Agents acting on behalf of the Applicant have contacted the Respondent on many occasions in relation to the rent arrears to seek payment of these arrears.

13. The Respondent has on occasion made promises to pay off the rent arrears accrued or to make additional payments towards the rent, but no such action has been taken by him.

14 Letting Agents acting on behalf of the Applicant understand that the Respondent is working and have signposted him to local help agencies on a number of occasions.

15. rent arrears accrued in terms of the tenancy agreement since July 2022 stand at £3502.26 only.

16. The sum of £3502.26 is lawfully due by the Respondent to the Applicant in terms of the tenancy agreement at the property.

17. A notice to Leave has been served on the Respondent on behalf of the Applicant and the Respondent has indicated to Letting Agents that he intends to leave the property as soon as the week beginning 20th May 2023.

### **Reasons for Decision**

18. The tribunal was satisfied on the basis of information which it had before it that rent in respect of this property had not been paid at all since July of 2022. What was

less clear are the reasons for that since it was understood that the Respondent is working. A number of attempts have been made to try to have the Respondent deal with the rent arrears and promises were made by him which were not kept. Given the number of unsuccessful attempts to obtain payment of the rent arrears it seems reasonable to grant a payment order in this application.

### **Decision**

The tribunal determined that a payment order be granted in favour of the Applicant and against the Respondent in the sum of £3502.26 pence only.

### **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.**

Valerie Bremner

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Legal Member/Chair

25.5.23  
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Date