



**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 /22/1468**

**Re: Property at 20 Rowett South Avenue, Aberdeen, AB21 9GL (“the Property”)**

**Parties:**

**Castle Rock Edinvar in association with Places for People Scotland Limited, 1 Hay avenue, Edinburgh, EH16 4RW (“the Applicant”)**

**Mr Craig Chrystal, 20 Rowett South Avenue, Aberdeen, AB21 9GL (“the Respondent”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member) and Melanie Booth (Ordinary 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 £13,145.30.**

The decision of the Tribunal was unanimous.

**Background**

1. This application for a payment order in terms of Rule 109 of the Tribunal rules of procedure was first lodged with the Tribunal on 18<sup>th</sup> May 2022 along with a related eviction order application (FTS/HPC/EV/22/1469). Both applications were accepted by the Tribunal on 1<sup>st</sup> June 2022 and a case management discussion was fixed for both applications on 12<sup>th</sup> August 2022 at 10am.

**Case Management Discussions**

2. At the case management discussion on 12<sup>th</sup> August 2022 the Applicant was represented by Mr Kenneth Caldwell solicitor of Patten and Prentice solicitors. There was no appearance by or on behalf of the Respondent and the Tribunal

members noted that both applications and supporting papers, together with the date of the case management discussion had been intimated to the Respondent by Sheriff Officers placing these through the letterbox at the property on 6<sup>th</sup> July 2022. The case management discussion proceeded in the absence of the Respondent as fair notice of the application and date of the discussion had been sent to him.

3. At the case management discussion on 12<sup>th</sup> August 2022 The Tribunal had sight of both applications, papers apart for both applications, a tenancy agreement, a rent statement, a Notice to Leave, an execution of service for the notice, a pre action protocol letter, a Notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003, an email acknowledging this notice and an up-to-date rent statement along with a request to increase the sum being requested in the payment order application.
4. Mr Caldwell advised that he had contacted the Tribunal by email in advance of the case management discussion to seek a postponement to a later date. The position was that the Respondent had contacted Mr Caldwell's clients advising that he wished to retain the tenancy, he worked offshore and could pay the rent going forward together with £200 per month towards the arrears and this arrangement appeared to have been accepted by the landlords. A payment of £300 had already been made towards the rent arrears by the Respondent. Mr Caldwell requested a continuation of the case management discussion to ascertain if the agreed arrangement continued. The Tribunal considered that it was appropriate to continue the case management discussion to a later date for this reason. The Tribunal issued a Direction to the Applicant's representative to advise the Tribunal if the Applications did not require to proceed at least 5 days before the case management discussion.
5. The case management discussion for both applications was continued until 11<sup>th</sup> November 2022 at 10am. On that date Mr Caldwell again attended to represent the Applicants and there was no appearance by or on behalf of the Respondent. Mr Caldwell had lodged with the Tribunal a series of emails exchanges between himself and the Respondent, one of which included the date of the case management discussion and the dial in codes for the teleconference. It was clear that the Respondent was aware of the case management discussion and the Tribunal was satisfied that it was appropriate to proceed in his absence given that he had received notice of the date of the discussion.
6. At this case management discussion, the Tribunal had sight of all the papers it had seen previously together with emails sent to the Tribunal by Mr Caldwell on 3<sup>rd</sup> and 4<sup>th</sup> November 2022 and responses to these sent by the Respondent.
7. Mr Caldwell confirmed to the Tribunal that the tenancy had commenced in January 2020 and the monthly rent payable was initially £450, which was increased later in the tenancy to £467.55 per month. A Notice to Leave had been served in June 2021 when rent arrears at the property had reached £5,690. Both the eviction and payment order applications had been made in May 2022 when the arrears had continued to increase, no rent having been paid during the period since the Notice to Leave was served. After the first case

management discussion on 12<sup>th</sup> August 2022 there had been no payments made towards the rent arrears as agreed by the Respondent. Mr Caldwell advised that the Respondent had inferred in emails that payments had been made but when asked to provide proof he had not done so. The Applicants had not changed any of the banking details required to make payment and the Respondent was aware of how to make payment. No payments had been made in 2022 other than £300 towards the rent arrears paid in July 2022. The current rent arrears amounted to over two years' rent due in terms of the tenancy agreement and as of November 2022 stood at £13,145.30.

8. Mr Caldwell advised that as at the start of the tenancy the Respondent was working as a labourer and was now thought to be working offshore. There was some suggestion that a relative of the Respondent might live at the property, but this was not confirmed, and the Respondent was the only tenant on the tenancy agreement. The Respondent it was said, had engaged in sending what were described as “belligerent” e mails and in one dated 3<sup>rd</sup> November 2022 had suggested that “nothing could be done until he came back on 18<sup>th</sup>”.
  
9. Mr Caldwell was instructed to seek a payment order in the sum of £13,145.30. He accepted that he had not imitated the request to amend the sum being requested to this amount to the Respondent 14 days before the case management discussion but had e mailed him on 3<sup>rd</sup> November 2022 giving him an up-to-date rent statement and a note of the current level of rent arrears. He also pointed to his original application which had requested the rent arrears due at that time (then £10,460) or “other such sum as is due as at the date of any hearing to follow ....”.
  
10. In this application a request to increase the original sum requested to £11,575.10 had been made in writing to the Tribunal and copied to the Respondent but not considered at the first case management discussion on 12<sup>th</sup> August 2022. The Tribunal was satisfied that this amendment to the sum requested could be granted as the requirements of Rule 14A of the Tribunal rules had been met. However, Mr Caldwell was now seeking a sum greater than this to reflect the current level of arrears. He confirmed that he was not seeking an award of expenses.
  
11. The Tribunal considered the terms of Rule 14A of the Tribunal rules of procedure which states:-
  - 14A.**—(1) Where a new issue is not raised, a party may request to amend the application, including the sum claimed, by intimating the amendment to any other party and the First-tier Tribunal at least 14 days prior to a case management discussion or hearing.
  
  - (2) The First-tier Tribunal may consent to the amendment on such conditions, if any, as the First-tier Tribunal thinks fit.

12. The Tribunal was satisfied that it could consider the current level of rent arrears in making a decision given the terms of the Applicant's solicitor's email to the Respondent dated 3<sup>rd</sup> November 2022 setting out the up-to-date level of arrears and the notice given in the application itself that a greater sum than originally requested might be requested at the hearing. The Tribunal considered that the email of 3<sup>rd</sup> November 2022 was effectively a request to amend the sum and the Respondent had been given fair notice of that even if this was a slightly shorter period than set out in Rule 14A of the Tribunal rules. The Respondent had not responded to the email disputing the level of arrears and had been advised in the initial application that the sum requested at the hearing could be greater. The Tribunal was satisfied that this amendment to the sum being requested could be allowed given that fair notice had been given and on these conditions Rule 14A(2) of the Rules of procedure was satisfied.
13. The Tribunal considered it had sufficient information upon which to make a decision and that the proceedings had been fair.

### **Findings in Fact**

14. The Applicants entered into a private residential tenancy at the property with the Respondent from 10<sup>th</sup> January 2020.
15. The monthly rent payable in terms of the tenancy agreement was initially £450 and this was increased to £467.55 per month in from June 2022.
16. As at June 2021 rent arrears in the sum of £5,690 had accrued in terms of the tenancy agreement.
17. By July 2022 the rent arrears had increased further, and no further rent payments had been made by the Respondent.
18. The Respondent contacted the Applicant's agents in July 2022 offering to pay the arrears at £200 per month and indicating that he wished to retain the tenancy.
19. The Applicant's agents agreed to this arrangement regarding the payment of the rent arrears.
20. The Respondent paid the sum of £300 towards rent arrears in July 2022.
21. No further rent payments have been received from the Respondent since that date and the arrears currently stand at £13,145.30.
22. The Respondent has not adhered to the payment plan agreed in respect of the rent arrears in July 2022.
23. The Respondent was in employment at the start of the tenancy and is now working offshore.

24. The sum of £13,145.30 is lawfully due by the Respondent to the Applicants in terms of rent arrears accrued during the tenancy.

### **Reasons for Decision**

25. The Tribunal was satisfied that the payment order was necessary given the history of non-payment of rent and the failure of the rent arrears payment plan suggested by the Respondent. The arrears have accrued over time and little rent has been paid. The Tribunal was also satisfied that it could allow an amendment of the sum being requested to £13,145.30 although the level of arrears had only been imitated to the Respondent 8 days before the case management discussion. The Respondent had not challenged the level of arrears and had been advised that the sum might increase in the original application. He could be assumed to know that the arrears were increasing given that no rent had been paid since July 2022. Fair notice of the increase in the sum being requested had therefore been given.

### **Decision**

The Tribunal granted a payment order in favour of the Applicant and against the Respondent in the sum of £13,145.30.

### **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.**

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**Legal Member/Chair**

11.11.22  
**Date**