



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

**Chamber Ref: FTS/HPC/CV/20/1471**

**Re: Property at 83 Norham Street, Flat 1/2, Glasgow, G41 3XP (“the Property”)**

**Parties:**

**Mr John Heraghty, 16 Tanfield Avenue, London, NW2 7RX (“the Applicant”)**

**Mr David Alexander Morgan, 83 Norham Street, Flat 1/2, Glasgow, G41 3XP (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (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 for the sum of £8800 should be granted against the Respondent in favour of the Applicant.**

**Background**

1. By application received on 26 June 2020 the Applicant seeks a payment order in terms of section 71 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). A copy tenancy agreement, Notice to Leave with Sheriff Officer certificate of service, rent statement and Notice in terms of Section 11 Homelessness etc (Scotland) Act 2003 were lodged with the application.
2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer on 27 August 2020. Both parties were advised that a Case Management Discussion (“CMD”) would take place on 21 September 2020. The case called for a CMD on that date. The Applicant was represented by Ms Gaughan, solicitor. The Respondent participated in person. The Respondent requested an adjournment to obtain legal advice. This was not

opposed and the CMD was adjourned to allow the Respondent to obtain legal representation. The Respondent was directed by the Legal Member to take immediate steps to obtain legal advice. On 1 October 2020 parties were notified that a further CMD would take place by telephone case conference on 5 November 2020 at 2pm. They were provided with a telephone number and passcode. On 21 October 2020, the Applicant submitted an amended statement of claim and updated rent statement. On 3 November 2020, the Respondent requested a postponement of the CMD. He indicated that the CMD was due to take place on 4 November 2020 and that he was waiting "for the DWP to confirm to my lawyer that I am on universal credit". The request was refused, and parties were advised that the CMD would proceed as scheduled at 2pm on 5 November 2020.

3. The application called for a CMD at 2pm on 5 November 2020. The Applicant was represented by Ms Gaughan, solicitor. The Respondent did not participate and was not represented.

### **Case Management Discussion**

4. Ms Gaughan advised the Legal Member that the Respondent is still in occupation of the property. The Applicant has been attempting to get access to the property for repairs. However, the Respondent fails to answer the door when tradesmen attend. The Applicant has had no contact from the Respondent. Ms Gaughan confirmed that the sums shown on the rent statement remain outstanding and that the Applicant seeks a payment order.
5. The Legal Member proceeded to discuss the amended rent statement submitted by the Applicant. In the application, the Applicant states that, although the tenancy agreement specifies rent of £600, the parties verbally agreed to increase this to £650 in May 2018. Ms Gaughan said that this is evidenced by the payments of £650 paid in September and October 2019. However, the Applicant has provided no additional evidence of an alleged agreement to increase the rent. Ms Gaughan advised the Legal Member that it remains the Applicant's position that the increased figure had been agreed. However, the Applicant does not seek additional time to provide further evidence. If the Tribunal is not persuaded that the agreed rent was £650, the Applicant's alternative position is that application should be determined based on the figure specified in the tenancy agreement, namely £600. The rent statement shows a balance due of £10,300. If an adjustment must be made to reflect the lower rent figure, Ms Gaughan confirmed that the total rent arrears currently due are £8800.

### **Findings in Fact**

6. The Applicant is the owner and landlord of the property.

7. The Respondent is the tenant of the property in terms of a tenancy agreement dated 10 May 2018.
8. The Respondent is due to pay rent at the rate of £600 per month.
9. The Respondent has been in arrears of rent since 10 May 2018.
10. The Respondent owes the sum of £8800 in unpaid rent to the Applicant.

### **Reasons for Decision**

11. The Legal Member is not satisfied that the Applicant has established that the rent charge was increased to £650 by agreement. No evidence of this agreement has been provided. The only document submitted, the one page tenancy agreement, states £600. Furthermore, the payment history does not establish that the Respondent agreed to a higher figure. The payments on the account are erratic. There are higher payments recorded for some months, but these could relate to the rent arrears which had accrued, rather than the current rent due for those months. The Legal Member is satisfied that the rent due in terms of the tenancy agreement is £600 per month.
12. The Legal Member is satisfied, from the rent account lodged with the application, and the information provided at the CMD, that the Respondent now owes the sum of £8800 in unpaid rent. The Legal member therefore determines that a payment order should be made against the Respondent for this amount.

### **Decision**

13. The Legal Member determines that a payment order should be granted against the Respondent for the sum of £8800.

### **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.**

# **J Bonnar**

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**Josephine Bonnar, Legal Member**

**5 November 2020**

