

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

**Chamber Ref: FTS/HPC/CV/23/1965**

**Re: Property at 66 Brewlands Crescent, Symington, Kilmarnock, KA1 5RL (“the Property”)**

**Parties:**

**Mr Jimmy Hugh Kennedy, Woodside, Kilgrammie, Girvan, KA26 9LD (“the Applicant”)**

**Miss Rebecca Higgins, Ms Fiona Higgins, 66 Brewlands Crescent, Symington, Kilmarnock, KA1 5RL; 32 Shawfarm Gardens, Prestwick, KA9 2JZ (“the Respondents”)**

**Tribunal Members:**

**Lesley Ward (Legal Member) and Melanie Booth (Ordinary Member)**

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

**1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondents shall make payment to the Applicant the sum of five thousand six hundred and fifty pounds (£5650) with interest at the rate of three percent (3%) per annum until payment.**

**2. This was a case management discussion (‘CMD’) in connection with an Application in terms of rule 111 of the First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2016, (‘the rules’) and s71 of the Housing (Scotland) Act 2016, (‘the Act’. The Applicant was represented by Miss Jennifer Anderson trainee**

solicitor. Neither Respondent attended and there was no representation for either Respondent. There was a second Application before the Tribunal for eviction in relation to the First Respondent only.

3. The Tribunal had before it the following copy documents:

- Application dated 14 June 2023.
- Land certificate.
- Landlord registration details.
- Private Residential Tenancy Agreement with guarantee dated 30 November 2018.
- Pre-action requirements letter dated 28 November 2022.
- Notice to leave dated 20 April 2023.
- Email serving notice to leave dated 20 April 2023.
- Rent statement.
- S11 notice and proof of service.
- Execution of service by sheriff officers on first and second Respondent dated 4 August 2023.

#### **4. Preliminary matters**

There are two Respondents for this Application. The second Respondent is a guarantor on the tenancy agreement and she was added as a party on 1 August 2023. The sheriff officer's report narrates that the guarantor no longer resides at the address at 17B Main Street Prestwick however they made inquiries on their database and they identified 32 Shawfield Gardens Prestwick KA9 2LZ as her current address. Inquiries were then made with neighbours at that address and the papers were served by depositing on 4 August 2023. The Tribunal had sight of both the execution of service by sheriff officers dated 4 August 2023 and was satisfied that both Respondents had received appropriate notice in terms of rule 24. The Tribunal was satisfied that it was fair to proceed in their absence in terms of rule 29.

#### **5. Discussion**

Miss Anderson had lodged an up to date rent statement on 25 August 2023 which gave the current arrears at £5726.26. The Respondent has not made any payment towards the rent or arrears since October 2022. The tribunal did not allow the sum sought to be amended as in terms of rule 13, 7 working days notice had not been given.

6. Miss Anderson invited the Tribunal to award expenses of the Application. The tribunal noted that there was no reference to expenses in the Application. Miss Anderson was also seeking interest at 8 percent.

## 7. Findings in fact

- The Applicant is the owner and registered landlord of the property.
- The parties entered into a private residential tenancy for let of the property on 30 November 2018 for let of the property from 1 December 2018.
- The agreed monthly rent was £500.
- Rent arrears began to accrue in December 2021.
- The rent arrears when the Application was made on 14 June 2023 were £5650.
- The sum of £5650 remains outstanding.

## 8. Reasons

This is an undefended Application to recover rent arrears arising out of a private residential tenancy agreement. The rent statement clearly shows that the sum of £5650 accrued between December 2021 and June 2023. Ms Fiona Higgins has signed the agreement as guarantor.

8. The tribunal was not minded to award expenses. The Application did not refer to expenses and fair notice had not been given. Further, standing the recent Upper Tribunal decision in Hutcheson and Russell (UTS/AP/22/0029 and 0030) expenses are not appropriate in this case. The Application sought interest at 8 percent and the Tribunal decided it was fair to award interest at 3 percent.

# L Ward

1 September 2023

Legal Member

Date

## 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.**