



**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/22/2492**

**Re: Property at 3 Bankfoot, Inverkip, Greenock, PA16 0DT (“the Property”)**

**Parties:**

**Trustees of Sir Houston Mark Shaw Stewart Testamentary Trust, Ardgowan Estate, Ardgowan House, Inverkip, PA16 0DW (“the Applicant”)**

**Mr Gordon MacLeod, 3 Bankfoot, Inverkip, Greenock, PA16 0DT (“the Respondent”)**

**Tribunal Members:**

**Petra Hennig-McFatrige (Legal Member) and Frances Wood (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 for the amount of £ 5,390 by the Respondents to the Applicant should be granted.**

**A: Background**

1. The application for an order for payment of rent arrears under S 71 of the Private Housing (Tenancies) (Scotland) Act 2016 arising from a Private Residential Tenancy Agreement between the parties was made by the Applicant on 25 July 2022.
2. The following documents were lodged to support the application and are referred to for their terms and held to be incorporated herein:
  - a. Copy tenancy agreement between the parties over the property commencing on 14 September 2020.
  - b. Tenancy rent statement for the period from 14 April 2021 to 14 July 2022
  - c. Tenancy rent statement for the period from 10 September 2020 to 14 September 2022
  - d. Tenancy rent statement for the period from 10 September 2020 to 14 October 2022

- e. email correspondence between Caroline McMillan, Property Manager for the Applicant and Mr Gordon MacLeod, Respondent between 14 June 2022 and 4 July 2022
3. On 23 September 2022 the application and notification of the Case Management Discussion (CMD) was served by Sheriff Officers on the Respondents. The Tribunal was satisfied that the Respondents had the required notice of the CMD as set out in Rules 17 (2) and 24 (2) of the Procedural Rules.
4. No formal representations were received from the Respondents.
5. On 10 October 2022 and on 17 October 2022 the Applicant sent updated rent statements and formally asked for an amendment of the sum for payment to £5,390. Each time the Applicant confirmed that the amendment had been also sent to the Respondent. The Tribunal had also crossed over the updated rent statements and increase applications for amendment to the Respondent.

#### **B: Case Management Discussion**

6. The Applicant's representative Mr Wright and the Property Manager Ms McMillan attended the CMD. The Respondent did not take part in the teleconference call.
7. The legal member explained the purpose of the CMD.
8. Ms McMillan advised that the Respondent had contacted the Applicant recently and stated that he will move out on 11 November 2022 and will put a payment plan in regarding the arrears of £100 per week commencing 21 November 2022 and would not be attending the CMD. Mr Wright asked the Tribunal to consider a payment order for the full amount of £5,390 and Ms McMillan stated that the Applicant would then be content if the payments proceeded as offered after 21 November 2022 but it was not possible to know if this would be the case.
9. The Tribunal allowed the amendment of the sum of rent arrears to the amount of £5,390 in terms of rule 14 A of the rules of procedure as the Respondent would have been aware of the amendment and the Applicant had already stated in the application that the application would be for an order for payment of any rent arrears outstanding at the relevant time. The Respondent thus has due notice of the amount.

#### **C: Findings in Fact:**

Based on the evidence lodged and the representations of the participants at the CMD the Tribunal makes the following findings in fact:

1. The property was let on a Private Residential Tenancy Agreement commencing on 14 September 2020.
2. The parties were the landlord and tenants of said Tenancy Agreement.
3. The tenancy continues.
4. The monthly rent of £490 is payable on the 14th day of the month and monthly in advance as per clause 8 of the tenancy agreement.
5. Rent arrears of £5,390 accrued as shown in the Rent Statements submitted for the period of up to and including 14 October 2022 and no further payment has been received since.

6. As at 28 October 2022 the amount due for payment by the Respondent to the Applicant is £5,390.
7. No time to pay direction application has been received from the Respondent

**D: Reasons for Decision:**

The Tribunal considered that the material facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or
- (c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;
- (b) identifying what facts are agreed between the parties;
- (c) raising with parties any issues it requires to be addressed;
- (d) discussing what witnesses, documents and other evidence will be required;
- (e) discussing whether or not a hearing is required; and
- (f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

However, in terms of Rule 18 of the Rules of Procedure:

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—  
(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

4. The Tribunal did not consider that there was any need for a hearing as there had been no representations from the Respondents and thus the arrears are not in dispute.

5. The Tribunal makes the decision on the basis of the documents lodged by the Applicant and the information provided by both representatives at the CMD.

6. The Tribunal is thus satisfied that the Respondent had entered into a Private Residential Tenancy Agreement with the Applicant for the property. The rent was

paid as set out in the rent statements lodged. No application for a time to pay direction or any other representations were provided by the Respondents. The amount stated in the application was due and resting owing as of the date of the CMD. The Respondents had due notice of the amount updated in the amendment applications and has not disputed the amount. As the amount is due and not disputed there is no need for a hearing and the Tribunal thus grants a payment order for the amount of £5,390 for arrears of rent.

**Decision:**

**The Tribunal grants the order for payment of the amount of £5,390 by the Respondents to the Applicant. The decision was unanimous.**

**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.**

**Petra Hennig McFatridge**

**28 October 2022**

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**Legal Member/Chair**

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**Date**