



**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/20/1871**

**Re: Property at 7 Westbrae, Paisley, PA1 2EB (“the Property”)**

**Parties:**

**Ms Jacqueline Granger, 6 Moss Drive, East freeland, Erskine, PA8 7AQ (“the Applicant”)**

**Mr Dean Moir, 7 Westbrae, Paisley, PA1 2EB (“the Respondent”)**

**Tribunal Members:**

**Jan Todd (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment in favour of the Applicant should be granted in the sum of £1,820.**

- Background
- 1. This was the first case management discussion (CMD) in respect of an application by the Applicant dated 4<sup>th</sup> September 2020 for an order for payment in respect of arrears of rent for time spent by the Respondent as the tenant in the Property from the Applicant.

The following documents were lodged with the application:-

- A copy of the Tenancy Agreement dated 29<sup>th</sup> August 2019
- Rent schedule to 29<sup>th</sup> August 2020 ,
- 2. The Tribunal also had sight of title deeds for the Property confirming the Applicant is the owner of the Property.
- 3. The Application was accepted by a Legal Member of the Tribunal on 9<sup>th</sup> September 2020.

## **CMD discussion**

4. The CMD proceeded today by way of teleconference due to the continued requirement at the current time for social distancing. The Convener made introductions, and explained how the CMD would be conducted over the teleconference. The Applicant did not attend but was represented by Ms Pamela Davren from Fineholm Lettings.
5. The Respondent did not attend nor was he represented on the teleconference. The Respondent had been served with the application and accompanying papers by sheriff officer on 21<sup>st</sup> September 2020 intimating the date and time of the CMD 19<sup>th</sup> October 2020. The Respondent has been given fair notice and the Tribunal therefore felt it was appropriate and fair to continue in his absence.
6. Ms Davren advised that she was seeking an order for payment in the revised sum of £2315 which she advised included another month's rent that became due since the application was lodged.
7. The written documentation shows a tenancy had been created between the parties where the Respondent leased the Property from the Applicant from 29<sup>th</sup> August 2019 and then rent due is £495 payable monthly in advance.
8. Ms Davren confirmed the tenant is still in the Property and has refused to pay any further rent. She advised they are communicating with him by e-mail and thought that he has been awarded some universal credit but neither she nor the landlord know how much has been awarded.
9. Ms Davren advised a notice to leave has been served on the tenant but the date of the notice will not expire until next year.
10. The legal member explained that although a Tribunal can make any order at a CMD that it could after a full hearing, the sum the Applicant is now claiming has not been intimated on the Respondent and so the Tribunal can only consider making an order today for the original sum claimed or it could allow an adjournment to allow an amendment to be lodged to ask for an increase and to intimate this on the Respondent. Ms Davren advised that she would rather seek an order for the original sum of £1820 today as the tenant is still in the Property and further rent may accrue over the next few months.

## **Findings in Fact**

1. The parties entered into a lease of the Property which commenced on 29<sup>th</sup> August 2019 and is a private rented tenancy.
2. The Rent due in terms of the lease is £495 monthly payable in advance on 29<sup>th</sup> of each month.
3. The tenant is still living in the Property.
4. The Respondent has failed to pay the rent in full from 29<sup>th</sup> February 2020
5. The rent outstanding at 4<sup>th</sup> September 2019 the date of the application is £1820
6. No further payments have been made towards the rent and another month's rent is due and owing.

7. There is a deposit but as the tenant is still living in the Property this is not available to go towards the current rent arrears.

- **Reasons for Decision**

8. The parties entered into a lease where the Respondent has leased the property from the Applicant from 29<sup>th</sup> August 2019 and has agreed to pay £495 in rent on a monthly basis.
9. The Respondent failed to make payment of rent timeously on 29<sup>th</sup> February and 29<sup>th</sup> March, and 29<sup>th</sup> April. He has paid £495 on 30<sup>th</sup> March, £350 on 20<sup>th</sup> April and £400 on 22<sup>nd</sup> May 2020 which left a balance outstanding of £240 however further arrears accrued on 29<sup>th</sup> May and 29<sup>th</sup> June with a further £400 being paid on 30<sup>th</sup> June leaving a new balance of £830. Since then 2 further payments of rent became due on 29<sup>th</sup> July and 29<sup>th</sup> August and the tenant has paid no further sums, giving a total balance due as of the beginning of September of £1,820.
10. The Applicant is entitled to recover rent lawfully due.
11. The Respondent has made no appearance at the CMD held to discuss this application and has made no written representations.
12. The Tribunal accepts the written evidence and verbal statements made by the Applicant's agent, who the Tribunal found clear and credible in her evidence that the rent outstanding and due by the Respondent as of the date of the application is £1,820. As no intimation has been made, which in accordance with the Tribunal's rules requires be made and intimated on the Respondent at least 14 days prior to the date of any CMD or hearing, the Tribunal cannot entertain any application for an increased sum today.
13. The Applicant's representative chose not to request time to amend the application and seeks an order for £1,820.
14. The Applicant cannot seek to minimise the claim by claiming payment of the deposit as the Respondent is still living in the Property.
15. There being no application for time to pay the Tribunal makes an order for payment of the sum claimed.

## **Decision**

An Order for payment of the sum of £1820 is granted.

## **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.Todd

19/10/2020

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**Legal Member/Chair**

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**Date**