



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

**Chamber Ref: FTS/HPC/CV/20/1915**

**Re: Property at 14 Earncraig Green, Irvine, KA11 1JH (“the Property”)**

**Parties:**

**Mr Alan Anderson, 9 Lyoncross, Donnyloadhead, FR4 1UG (“the Applicant”)**

**Ms Diane Mooney, UNKNOWN, UNKNOWN (“the Respondent”)**

**Tribunal Members:**

**Petra Hennig-McFatridge (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 by the Respondent to the Applicant for the sum of £4,828.08 should be granted.**

**Background**

This is an application for payment of outstanding rent lodged with the Tribunal on 10 September 2020 in terms of S 71 (1) of the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act).

The Applicant is seeking payment of arrears of rent as per the rent schedule attached to the application, which shows arrears of rent of £3,325 as at 18 June 2021 and further arrears as narrated in the case progress. The Applicant had lodged the following documents in evidence: the Private Residential Tenancy Agreement, the rent statement, a letter dated 17 December 2020 sent to the Respondent advising of the final outstanding sum of £5,303.08. .

A Case Management Discussion (CMD) had taken place on 7 December 2020 and was continued to a further CMD to update the sum sought in the order to the final amount due after the Respondent had left the property on 23 November 2020.

At the further CMD on 18 March 2021 the application was refused because neither party attended. The decision was sent to the parties on 6 April 2021. A recall application was made by the Applicant on 6 April 2021 and supported by an email of Ms Mel Connelly dated 6 April 2021. A further CMD under Rule 30 (9) (c) was scheduled for 3 August 2021. The Respondent was notified through service by advertisement in terms of Rule 6A as no address for the Respondent could be found.

### **The Case Management Discussion**

The Applicant's representative Ms Farrell attended the telephone conference. The Respondent did not attend. Ms Farrell explained that the Applicant's representative Ms Melanie O'Boyle, who had made the application, had been taken to hospital after she had collapsed on 15 March 2021. She then had been admitted as an inpatient for several days, by which time the CMD on 18 March 2021 had been missed. Ms O'Boyle was the manager of Glow Homes Lettings and Sales and at the relevant time the only other staff member was part time and had not been dealing with this kind of work. The name mentioned in the decision, Melanie Connelly, was the married name of Ms O'Boyle. She, Ms Farrell, had only started working for the company in April 2021. On 18 March 2021 Ms Connelly had been too unwell to be able to notify the Tribunal or the Applicant and had still been in hospital. When it came to light that there had been no representation of the Applicant at the CMD on 18 March 2021 steps were immediately taken to inform the Tribunal of the circumstances in the email of 6 April 2021 by Ms Connelly. Thus the decision should be recalled.

With regard to the material facts of the case, no other payments had been received since the period reflected in the rent statement. This meant that a further 4 months and 5 days of arrears had accumulated to the end date of the tenancy on 23 November 2020, resulting in a total of arrears of £5,303.08. The deposit of £475 had been released to the Applicant and thus would have to be deducted, leaving a total amount of £4,828.08 of arrears at the date of the CMD.

There have been no representations of the Respondent in the case.

### **Decision on Recall application:**

The Applicant had instructed Glow Homes Lettings and Sales to represent him. The only member of staff involved in this case was the office manager Ms Connelly. On 15 March 2021 she collapsed and was taken into hospital, where she remained until after 18 March 2021. Because this was a sudden and unexpected medical emergency, Ms Connelly did not have the opportunity to either contact the Applicant or the Tribunal, which led to the Applicant not being represented at the CMD on 18 March 2021. This was unavoidable and outwith the control of the Applicant. The application for recall was made on 6 April 2021, the date the Tribunal had issued the decision made at the CMD. In terms of Rule 30 the application for recall was made in time. Given the detailed explanation of the circumstances leading to the lack of representation of the Applicant at the CMD on 18 March 2021 the decision to refuse the application is recalled. The Tribunal thus requires to now make a new decision in the case.

## Findings in Fact

Based on the documents submitted and the information provided at the CMDs in the case the Tribunal is satisfied that the following facts have been evidenced:

1. The Applicant and the Respondent entered into a Private Residential Tenancy Agreement for the property commencing on 18 September 2018. (Clause 6)
2. Rent of £475 per calendar month was payable in advance on the 18th day of the month (Cause 8).
3. A deposit of £475 was paid by the Respondent (Clause 11). This was released to the Applicant following the end of the tenancy.
4. The tenancy terminated on 23 November 2020.
5. As at the date of the CMD the amount of £4828.08 rent arrears, taking into account the release of the deposit to the Applicant, is still outstanding.
6. The Respondent has been advised of the outstanding amount.

## Reasons for decision

1. 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.

2. 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.

3. The documents lodged are referred to for their terms and held to be incorporated herein. The Tribunal makes the decision on the basis of the documents lodged by the Applicant and the information given at CMDs.

4. The Tribunal did not consider that there was any need for a hearing as there had been no defence lodged by the Respondent and the application had not been opposed. In terms of Rule 18 of the Rules of Procedure the Tribunal is satisfied that it is not contrary to the interests of the parties to make a decision at the CMD and that the information available in document form and from the Applicant's Representative at the CMD allows sufficient findings to determine the case.

5. The Respondent had fair notice of the representations of the Applicant forming the reasons for the application and the updated arrears amount and had not challenged these. The last amendment of the arrears figure had been made 14 days prior to the CMD in terms of Rule 14A and the Tribunal grants the amendment to that sum. The Respondent had not left a forwarding address and had received legal notification of the application and the CMD by advertisement.

6. The Tribunal is satisfied that the Respondent had entered into a Private Residential Tenancy Agreement with the Applicant for the property with a monthly rental charge of £475 and had failed to make the necessary rental payments as shown in the arrears statements lodged and in the update provided. The Respondent had not put forward any reason why the rent should not be due. The Tribunal is satisfied that the rent arrears following the allocation of the deposit to the Applicant are £4,828.08.

7. As the Tribunal has not received an application for a time to pay direction from the Respondents with the necessary financial information, the Tribunal cannot make a time to pay direction and thus grants the order for the total sum of £4,828.08.

9. The Applicant is entitled to a payment order for the sum of £4,828.08 for the rent arrears due up to and including 23 November 2020, which was the end date of the tenancy.

### **Decision:**

**The Tribunal recalled the decision of 18 March 2021 and makes an order for payment of the amount of £4,828.08 of arrears of rent by the Respondent to the Applicant.**

### **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  
Legal Member/Chair**

**3 August 2021  
Date**