



**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/20/1938**

**Re: Property at 8D Boyd Street, Prestwick, KA9 1JZ (“the Property”)**

**Parties:**

**Mrs Lorraine Espie, 7 Carleton Gardens, Prestwick, KA9 2HP (“the Applicant”)**

**Mr Nicholas Capon, formerly residing at 8D Boyd Street, Prestwick and whose present whereabouts are unknown (“the Respondent”)**

**Tribunal Members:**

**Melanie Barbour (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**Background**

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 111 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for payment in relation to unpaid rent together with interest at 3.5% per annum.
2. The application contained:-
  - a copy of the tenancy agreement
  - rental statement
  - statement of broadband charges
3. At today’s case management discussion Mr Harris from Jackson Boyd LLP, appeared for the Applicant. There was no appearance by the Respondent. I was satisfied service on the Respondent had taken place by advertisement and

I was therefore prepared to proceed with the case management discussion in his absence.

### Discussion

4. The Applicant's Agent advised that the rent arrears and broadband charges were still outstanding. The Respondent had left the property on 2 August 2020 and at that time the rent arrears were £2,250. The Respondent was also liable for broadband charges amounting to £100. He understood that the last payment made towards rent and broadband was in March 2020; and he understood that there had been no further payments since that date.
5. The Applicant's Agent advised that the Applicant had made a number of attempts by phone, text and letter to contact the Respondent to seek repayment of the rent and broadband arrears. The Respondent was aware of the rent arrears. The attempts to obtain payment from the Respondent had been unsuccessful.
6. The Applicants' agent advised that the rent and broadband arrears were still outstanding and amounted to £2350. The Applicant also sought interest on that sum at a rate of 3.5% per annum. He appreciated that it was a discretionary matter for the tribunal to award interest, however he submitted that this was a fair rate to seek, and it was not as high as the judicial rate. The Applicant sought an order for this sum.

### Findings in Fact

7. The Tribunal found the following facts to be established:
  - a) A tenancy agreement was entered into between the Applicant and the Respondent for the property. It commenced on 12 August 2019. It ended on 2 August 2020.
  - b) Clause 10 of the tenancy agreement provided that monthly rent was £450.
  - c) Clause 20 of the tenancy agreement provided that after the first 6 months of the tenancy there was a £20 charge for broadband service.
  - d) The rent account statement showed amounts due each month, amounts received, and rent outstanding and showed arrears as at 12 August 2020.
  - e) The broadband account statement showed amounts due each month, amounts received, and amount outstanding and showed arrears as at 12 August 2020.
  - f) That the Respondent had not made any payments towards the arrears since 12 March 2020.

g) That rent and broadband arrears up to 12 August 2020, totalled £2350.

### Reasons for Decision

8. Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 provides that the First Tier Tribunal has jurisdiction in relation to civil proceedings arising from private residential tenancies. As this tenancy is a private residential tenancy, I am content that I have jurisdiction to deal with this case.
9. The tenancy agreement created obligations between the parties including, obligations to pay rent and broadband charges. The Respondent had failed to make these payments.
10. The Applicant sought interest at 3.5% per annum and submitted in support of interest being awarded that it was a fair sum to seek and not as high as judicial interest. I was prepared to award interest at a rate of 3.5% per annum. Rule 41 A of the 2017 Tribunal Rules allows for awards of interest to be made which shall run from the date of the order. The Bank of England base lending rate is currently 0.10%. Judicial interest is 8%. I have discretion as to whether or not to grant interest and to determine the interest rate. I consider that imposing 3.5% interest on the sum due is not unreasonable, and is a penalty imposed on the Respondent for his failure to meet his obligations to pay rent.
11. Based on the evidence submitted and having regard to the papers submitted including the application, I consider that I should make a payment order of £2,350 with interest to be paid from the date of the order at a rate of 3.5% per annum.

### Decision

12. I grant an order in favour of the Applicant for the Sum of TWO THOUSAND THREE HUNDRED AND FIFTY POUNDS (£2,350) STERLING with interest at a rate of 3.5% per annum against the Respondent.

### **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.**

**Melanie Barbour**

**27 November 2020**

---

**Legal Member/Chair**

---

**Date**