



**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/20/2141**

**Re: Property at 28 Balmoral Drive, Bearsden, Glasgow, G61 1DJ (“the Property”)**

**Parties:**

**Mr Robert Kennedy, 98 Speirs Road, Bearsden, Glasgow, G61 2LA (“the Applicant”)**

**Ms Maureen Quinn, 28 Balmoral Drive, Bearsden, Glasgow, G61 1DJ (“the Respondent”)**

**Tribunal Members:**

**Richard Mill (Legal Member) and Gerard Darroch (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for Payment should be made against the Respondent in the sum of Six Thousand Pounds Sterling (£6,000)**

**Introduction**

1. This is a payment order application under Rule 111 and Section 71 of the Private Housing (Scotland) Act 2016. This application was heard at the same time as case reference FTS/HPC/EV/20/2573 which is between the same parties and is an eviction application.
2. Service of the proceedings and intimation of the Case Management Discussion (CMD) was effected upon the respondent by Sheriff Officers on 25 November 2020.
3. Two CMDs have taken place in this application - on 6 January and 3 March 2021. At the first hearing the respondent represented her own interests. At the

second CMD she was represented by a solicitor (Mr J Smith of Messrs Latta & Co) but he has now withdrawn from acting. Due to ambiguity regarding the respondent's position in seeking to defend this application, a Direction was issued after the CMD on 3 March 2021.

4. The respondent was required to provide a detailed written submission clarifying:
  1. Precisely what she accepts is outstanding in terms of rent arrears, and the offer which she makes to repay these sums.
  2. The sums which were previously paid to her directly by the DWP in terms of housing costs and evidence (in the form of a bank statement) of what element of these sums she holds now.
5. The Respondent also required to make any Time to Pay Application, if so advised. The said documentation should be lodged with the Chamber no later than 5pm on Thursday 25 March 2021. This Direction was not complied with.

#### The Hearing

6. The final evidential two member Tribunal hearing took place at 10.00 am on 15 April 2021 by teleconference. The applicant joined the hearing personally along with his wife and represented their own interests. The respondent joined personally and represented her own interests.
7. The Tribunal made inquiry with both parties in relation to the merits of the application. Both parties were afforded the opportunity of providing any further additional evidence and making any further representations and concluding submissions.

#### Findings and Reasons

8. The property is 28 Balmoral Drive, Bearsden, Glasgow G61 1DJ.
9. The applicant is Mr Robert Kennedy who is the landlord. The respondent is Ms Maureen Quinn who is the tenant. The owner of the property is the applicant. The applicant and his wife, Jackie Kennedy, are both named as landlords on the written lease. She has been significantly involved in communications with the respondent and the administration of the tenancy.
10. The parties entered into a private residential tenancy in respect of the property which commenced on 1 January 2019. The rent was stipulated at £1,000 per month. A deposit in the sum of £1,000 was paid.
11. The respondent has fallen into arrears of the rental payments. No rent has been paid since July 2020.

12. The application before the Tribunal when made on 9 October 2020 sought to recover the two months of unpaid rent totalling £2,000.
13. On 27 January 2021 a Rule 14A amendment was made by the applicant. The sum sought by way of payment order was increased to £6,000. A rent statement shows that no rent has been paid since July 2020. Full payments of rent had been paid to up to then.
14. At the first CMD on 6 January 2021 the respondent's position was that there was a rent reduction arrangement in place which had been ongoing since early 2020 due to the impact of the Coronavirus pandemic. She accepted that rent was due but could not state how much. The applicant's position at that time was that there had been an offer that the £1,000 a month rent would be reduced temporarily to £700 per calendar month, but this was not a rent reduction but a rent deferment. Furthermore, and in any event, the respondent had never acknowledged or accepted that arrangement and, indeed, had continued to make payments of full rent until July 2020. Subsequent email communications are lodged with the Tribunal from the applicant which clearly show that this was a rent deferment arrangement. The rent deferment arrangement (as opposed to a rent reduction arrangement) was acknowledged by the respondent's solicitor at the CMD on 3 March 2021.
15. The respondent's position throughout the period that this application has been pending before the Tribunal has been inconsistent. On 3 March 2021 the respondent's then solicitor indicated that he had standing instructions to make an offer of repayment, but could not specify what this amounted to. Despite being afforded an adjournment to speak directly to the respondent on that occasion, there was no clarity regarding any offer to make repayment of sums outstanding or, indeed, what precisely the respondent accepted was due. It was clear that she accepted that some rent was due at that time. Indeed, even at the first CMD in January 2021, there was an acknowledgement by the respondent that there was some rent due. It was also accepted on behalf of the respondent at the CMD on 3 March 2021 that she had received benefit money (being the housing element of her Universal Credit claim) and had not forwarded such sums to the applicant. She had retained the monies but there was lack of clarity over how much.
16. At the final hearing on 15 April 2021 the respondent sought to advance another proposed defence to the proceedings. She stated that it had been the subject of agreement between herself and the applicant that she would undertake substantial renovation works in the property and that she would be allowed to stay in the property long-term. The respondent was somewhat vague about these arrangements and accepted that there was no formal contract between

herself and the applicant to reflect such arrangements. The applicant's position is that the property was originally advertised at £1,250 rent per month. To reflect the respondent's willingness to undertake certain enhancements in the property, it was agreed that the rent should be reduced to £1,000 per month which is reflected within the written lease. The applicant acknowledged that the respondent has carried out some works, including the replacement of some carpeting and renovation of the bathroom.

17. Regardless of any works which the respondent has undertaken and been responsible for in the property, she retains the status of a tenant with no right to claim any compensation or return of monies in respect of money spent on the let property. The Tribunal was satisfied that there was a clear rent reduction from the beginning of the lease in place to take account of the respondent's improvements to the property. She has no right or entitlement to offset the costs of any such work undertaken by her against the outstanding rent. She had not raised this proposed line of defence with the Tribunal at the first CMD on 6 January 2021 and neither had her solicitor raised it at the second CMD on 3 March 2021. The Tribunal had reservations regarding the respondent's credibility. Her position as advanced at the evidential hearing was that she accepted that no rent had been paid at all since July 2020, acknowledged that she had received at least £3,000 of public money by way of benefits towards her rent but had withheld this, and claimed that she was not due the applicants any rent money at all and indicated no intention to make any payments. The respondent's position is wholly unreasonable.
18. The applicant seeks to recover £6,000 of rent arrears. The applicant relies upon a clear detailed rent ledger which discloses that £6,000 are outstanding (and indeed increasing). The respondent accepts that no payments have been made since July 2020. She has advanced no valid, credible defence to the proceedings.
19. The applicant is entitled to recover arrears of rent lawfully due under and in terms of the lease between the parties.
20. The Tribunal found that the applicant is entitled to recover £6,000 of rent arrears and accordingly made a Payment Order against the respondent to this effect. The tribunal relied upon the credible and reliable documentary evidence provided in support of the application, together with the credible and reliable oral evidence of the applicant and his wife.

## **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**

**Legal Member/Chair**

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**Date**