



**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/21/1762**

**Re: Property at 13 Haremosse Drive, Portlethen, Aberdeenshire, AB12 4UX (“the  
Property”)**

**Parties:**

**Ms Pei H Tan, 5 Kirk Brae Court, Cults, Aberdeen, AB15 9QE (“the Applicant”)**

**Mr Angelo Juan Van Wyk, 13 Haremosse Drive, Portlethen, Aberdeenshire,  
AB12 4UX (“the Respondent”)**

**Tribunal Members:**

**Neil Kinnear (Legal Member)**

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

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

This was an application for a payment order dated 21<sup>st</sup> July 2021 and brought in terms of Rule 111 (Application for civil proceedings in relation to a private residential tenancy) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant sought in her application payment of arrears in rental payments of £3,600.00 in relation to the Property from the Respondent, and provided with her application copies of the private residential tenancy agreement and rent arrears statement.

The private residential tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*, and the procedures set out in that Act appeared to have been correctly followed and applied.

The Respondent has been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 12<sup>th</sup> August 2021, and the Tribunal was provided with the execution of service.

Both parties submitted further documents in advance of the Case Management Discussion.

A Case Management Discussion was held at 14.00 on 14<sup>th</sup> September 2021 by Tele-Conference. The Applicant participated, and was not represented. The Respondent participated, and was not represented.

The Applicant confirmed that the three rent payments due on 1<sup>st</sup> June, 1<sup>st</sup> July and 1<sup>st</sup> August referred to in her application had now been paid by the Respondent. However, since she lodged her application, the payment of 1<sup>st</sup> September had fallen due and not been paid. As a result, she wished to seek payment of £1,200 in respect of that September payment.

The Tribunal explained to the Applicant that as all the rent arrears she originally sought in her application had now been paid, she would need to amend her application to instead seek the one outstanding rental payment due on 1<sup>st</sup> September 2021 in terms of the Tribunal's rules of procedure, and the Applicant advised the Tribunal that she would do so.

The Respondent explained that due to a cyber attack, he had been locked out of his internet bank account, which stopped him making the rental payments. However, he had arranged for his employer to make payments on his behalf until he was able to arrange to have his bank account unlocked. That process was more difficult than normal as he was currently working in South Africa, and his British bank required to send him unlocking details by post.

The Respondent understood that all rent payments had been made, and that no payments were outstanding.

As a result of further discussion, it appeared that of the four payments the Respondent had understood had been made of £1,200 each, three of those had been received by the Applicant. However, one payment made in late July had not. The Respondent advised that he would investigate that payment and confirm what had happened with it.

In these circumstances, the Tribunal considered that it was in the interests of justice to continue the Case Management Discussion to allow the Respondent to investigate the payment which he understood had been made, but which the Applicant had not received. The parties were content for that to be done.

Shortly before the continued Case Management Discussion, both parties submitted further documents

A continued Case Management Discussion was scheduled to be held at 10.00 on 21<sup>st</sup> October 2021 by Tele-Conference. Neither party participated, and neither party was represented.

The Respondent e-mailed shortly before the commencement of the continued Case Management Discussion to advise the Tribunal that due to a family medical emergency, he was on his way to hospital and as a result would not be able to participate. He apologised and requested the continued Case Management Discussion be further continued.

The Tribunal's administration attempted to telephone the Applicant, but received no reply to its call.

In those unusual circumstances, the Tribunal considered that it was in the interests of justice to further continue the continued Case Management Discussion one further time to allow both parties the opportunity to attend and make representations to the Tribunal.

The day before the continued Case Management Discussion, the Applicant submitted an updated rent arrears statement.

A continued Case Management Discussion was held at 10.00 on 3<sup>rd</sup> December 2021 by Tele-Conference. The Applicant participated, and was not represented. The Respondent participated, and was not represented.

The Applicant advised the Tribunal that two months' rent was now outstanding totalling £2,400.00. That sum was comprised of the payments due on 1<sup>st</sup> September and 1<sup>st</sup> December 2021.

The Respondent advised that he had transferred the payment due on 1<sup>st</sup> December 2021 today. That payment was coming from South Africa, and had not yet reached the Applicant's bank account. He was perplexed that the payment for September had not been received.

After discussion between the parties and the Tribunal, it became clear that a payment of £1,200.00 made on 20<sup>th</sup> October 2021 from South Africa had not in fact completed, and the sums had not been transferred. The Respondent accepted that the Applicant had not received that payment, and asked for a further adjournment to allow him to rectify that and to investigate why the payment had not gone through the banking system as it should have.

The Respondent advised that he was returning to Scotland on a flight today, and would be able to investigate and arrange the transfer of the payment due from 1<sup>st</sup> September when he arrives back in this country.

In these, again, unusual circumstances, the Tribunal considered that it was in the interests of justice to further continue the continued Case Management Discussion again one further time to allow the Respondent to make payment of the sum due on 1<sup>st</sup> September 2021, and for his recent payment for the sum due on 1<sup>st</sup> December to be received by the Applicant.

Shortly before the continued Case Management Discussion, the Applicant sent the Tribunal an updated rent arrears statement.

## **The Continued Case Management Discussion**

A continued Case Management Discussion was held at 10.00 on 18<sup>th</sup> January 2022 by Tele-Conference. The Applicant participated, and was not represented. The Respondent did not participate, and was not represented.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Tribunal was invited by the Applicant with reference to the application and papers to grant an order for payment of the sum of £1,200.00, which remains the sum outstanding. The Applicant explained that she had received the payment due on 1<sup>st</sup> December 2021, and subsequently also the payment due on 1<sup>st</sup> January 2022. However, the payment due on 1<sup>st</sup> September 2021 referred to above had not been received by her and remained outstanding.

## **Statement of Reasons**

The jurisdiction of the Tribunal in relation to Private Residential Tenancies, such as that which applied to the Property, is set by statute. Section 71(1) of the *Private Housing (Tenancies) (Scotland) Act 2016* provides:

### **“First-tier Tribunal's jurisdiction**

- (1) In relation to civil proceedings arising from a private residential tenancy—
  - (a) the First-tier Tribunal has whatever competence and jurisdiction a sheriff would have but for paragraph (b),
  - (b) a sheriff does not have competence or jurisdiction.
- (2) For the purposes of subsection (1), civil proceedings are any proceedings other than—
  - (a) the prosecution of a criminal offence,
  - (b) any proceedings related to such a prosecution.”

The Tribunal accordingly has jurisdiction to hear civil proceedings arising from a private residential tenancy such as between the parties in this application.

The Tribunal considered the terms of the private residential tenancy agreement, the rent arrears information provided, and the submissions made by the Applicant, and was satisfied that these disclosed an outstanding balance of rent arrears of the sum sought of £1,200.00, which sum remains outstanding. Rental of £1,200.00 per month was payable in advance in terms of clause 8 of the private residential tenancy agreement.

The Respondent accepted at the continued Case Management Discussion on 3<sup>rd</sup> December 2021 that a payment of £1,200.00 made on 20<sup>th</sup> October 2021 from South Africa had not in fact completed, and the sums had not been transferred. The Respondent accepted that the Applicant had not received that payment, and asked for a further adjournment to allow him to rectify that and to investigate why the

payment had not gone through the banking system as it should have. The Respondent advised that he was returning to Scotland on a flight later that day, and would be able to investigate and arrange the transfer of the payment due from 1<sup>st</sup> September when he arrived back in this country.

Since the continued Case Management Discussion on 3<sup>rd</sup> December 2021, neither the Tribunal nor the Applicant have heard further from the Respondent, and he has not arranged the transfer of the payment due from 1<sup>st</sup> September 2021.

## **Decision**

In these circumstances, the Tribunal made an order for payment by the Respondent to the Applicant of the sum of £1,200.00.

## **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.**



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**Legal Member/Chair**

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**Date: 18 January 2022**