



**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/21/2413

Re: Property at 20 Craginair Street, Dalbeattie, DG5 4AX (“the Property”)

Parties:

**Mrs Mary McMullen, Mr William Bennett, 55 Abercromby Road, Castle Douglas,
DG7 1BB (“the Applicants”)**

Mr John Logan, 20 Craginair Street, Dalbeattie, DG5 4AX (“the Respondent”)

Tribunal Members:

Sarah O'Neill (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 by the respondent of the sum of £2290 should be granted in favour of the applicants.

Background

1. An application was received on 6 October 2021 from the applicants' representative, Wallets Rural Property Services, Castle Douglas, for a payment order brought in terms of rule 111 (Application for civil proceedings in relation to a private residential tenancy) of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”).
2. The applicants were seeking payment of rent arrears of £2290 from the respondent in relation to the property, which was stated to be the amount of arrears as at the date the application form was submitted. Attached to the application form were the following:

- i) copy private residential tenancy agreement between the parties dated 9 and 24 June 2019
 - ii) rent statement showing the outstanding rent arrears as at 29 September 2021 to be £2290
 - iii) land certificate relating to the property
 - iv) terms of business between Mr William Bennett, one of the joint applicants and Wallets Rural Property Services relating to the letting and management of the property.
3. Following a request from the tribunal administration, an email was received from the applicant's representative on 3 November 2021, enclosing 1) a signed mandate from the applicants confirming that Mrs Emma McGuinn of Wallets Rural Property Services was authorised to act on their behalf in relation to the application and 2) a further rent statement in a different format to the original. Following a further request to provide a clearer rent statement, a further rent statement, in a third format, was received from Mrs McGuinn on 23 November 2021.
4. The application was accepted by the tribunal for determination on 23 November 2021.
5. The application papers, together with notice of the case management discussion (CMD) scheduled for 20 January 2022, were served on the respondent by sheriff officer on behalf of the tribunal on 15 December 2021. No written representations or time to pay application were received from the respondent prior to the CMD.
6. An email was received from the applicants' representative on 18 January 2022, enclosing various emails sent to the respondent regarding his rent arrears, dated between 5 March 2020 and 6 March 2021.

The CMD

7. A case management discussion (CMD) was held by remote teleconference call on 20 January 2022. The applicant was represented by Mrs Emma McGuinn of Wallets Rural Property Services. The respondent was not present or represented on the teleconference call.
8. The tribunal delayed the start of the CMD by 10 minutes, in case the respondent had been detained. He did not appear, however, and no telephone calls or messages had been received from him. The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a CMD had been

duly complied with. It therefore proceeded with the CMD in the absence of the respondent.

9. Mrs McGuinn asked the tribunal to grant an order in favour of the applicants. She said that the respondent now owed a total of £4490 in rent arrears as at 28 December 2021. No payments had been made by the respondent towards his rent arrears since 29 June 2021. So far as she was aware, the respondent was still living in the property.
10. The tribunal chairperson noted that the most recent rent statement provided did not appear to tally with either the sum claimed in the original application or the letters sent to the respondent regarding his arrears. In particular, the sum stated in the application as being due as at 6 October 2021 was £2290. A letter sent to the respondent on 30 September 2021 also said that this was the sum due as at that date. The rent statement provided on 23 November 2021, however, showed the sum due as at that date to be £3640. There were various other discrepancies between the sums shown in the letters to the respondent and those on the rent statement as at various other dates.
11. Mrs McGuinn explained that these discrepancies arose due to an accounting issue. The respondent had paid the rent via standing order, and the banking system was showing rent as having paid in, when in fact there were insufficient funds in the respondent's bank account to pay the amount due. This meant that on the following day, the £450 payment was no longer showing when the bank statement was later printed out. This had only come to light after the tribunal application had been submitted, which was why the sum stated was incorrect.
12. The tribunal chairperson noted that no requests had been received from the applicant to amend the sum sought in the application. Given this, and the fact that the letter sent to the respondent on 30 September 2021 also stated that the sum due was £2290, the tribunal was not in a position to grant an order for any more than this sum as at the date of the CMD.
13. Ms McGuinn confirmed that, rather than postpone the CMD to another date to allow for an amendment request and updated rent statement to be submitted, she wished to seek an order for £2290. If necessary, she would submit a further application seeking any additional sums due alongside any future application for eviction following the service of a notice to leave on the respondent.

Findings in fact

14. The tribunal made the following findings in fact:

- The applicants are the joint owners of the property. Mr Bennett is the landlord named in the private residential tenancy between the parties. Mrs McMullen is the registered landlord of the property, with Mr Bennett named as a joint owner.
- The private residential tenancy between Mr Bennett and the respondent commenced on 28 June 2019.
- The rent payable under the tenancy agreement was £450 per month, payable in advance on the 28th of each month.
- The applicants' representative had sent numerous letters to the respondent advising him that he was in rent arrears.
- As at 28 November 2021, the respondent owed the applicants the sum of £2290 in rent arrears.

Reasons for decision

15. On the basis of all the evidence before it, the tribunal was satisfied that the applicant owed £2290 to the applicant as at the date of the CMD, and that he had been notified that this sum was due by the applicants. The tribunal therefore decided to make an order for payment by the respondent to the applicants of that sum.

Decision

The tribunal grants an order for payment by the respondent to the applicants for the sum of £2290.

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.

S O'Neill

Legal Member/Chair

20/01/2022

Date

