



**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/21/3040**

**Re: Property at 38B West Main Street, Darvel, KA17 0AQ (“the Property”)**

**Parties:**

**Mr Alan North, 20 Bibby Place, Elgin, IV30 1AN (“the Applicant”)**

**Mr David Michael Gordon Pirie, 12 Loudoun Road West, Newmilns, KA16 9JA (“the Respondent”)**

**Tribunal Members:**

**Karen Kirk (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted a Payment Order against the Respondent for the sum of £1505.26 plus interest at the rate of 3 percent per annum from 8<sup>th</sup> June 2022 until payment.**

**Introduction**

This CMD concerned an Application for Civil Proceedings in relation to a Private Residential Tenancy under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016. The CMD took place by teleconference due to the covid-19 pandemic. The purpose and options open to the Tribunal was explained.

**1. Attendance and Representation**

The Applicant was not present. He was represented by Ken Johnstone and Alice Seggie from Chesnutt Skeoch Ltd, 30 East Main street, Darvel, KA17 0HP.

The Respondent was not present. He had been served by Sheriff Officer on 22<sup>nd</sup> February 2022. Following that service the Tribunal also sent correspondence with the continued hearing date and details of the application to increase the sum sought following the first hearing of the Application where there was no attendance by either party to the Respondents new address care of his sister following the end of the Private Residential Tenancy between parties. This address was 12 Loudoun Road West, Newmilns, KA16 9JA.

## **2. Background**

A first Case Management Discussion took place in this case on the 7<sup>th</sup> April 2022. There was no appearance by any party. The Tribunal Adjourned the proceedings to a further case management discussion for the attendance of parties and to allow intimation of an amended sum sought on the Respondent.

The Tribunal issued directions to the Applicant to provide new contact details for the Respondent to allow the Tribunal to send their email of 4<sup>th</sup> April 2022 given that his address has since changed seeking to change the sum sought to the Respondent or confirmation this has been sent to the Respondent and to provide a date for when the Respondent left the Property.

## **3. Preliminary Matters**

The Respondent was not present. The Applicant's representative confirmed the response lodged in terms of the directions issued that the Applicant does not have an exact date of exit. Universal Credit for the property stopped and a letter confirming same was received on or around end of February 2022. The Applicant instructed a hand delivered letter on 24<sup>th</sup> February 2022 providing 28 days notice to terminate the tenancy. The Applicant's representative said that on the visit to the property on 24<sup>th</sup> February 2022 the washing machine was on and the TV had been left on with belongings present.

The Applicant's representative said that the Respondent's sister had paid the deposit for the property and her address was used in regards the deposit return and submissions for damages.

The Applicant's representative by email of 4<sup>th</sup> April 2022 had sought to amend the sum sought from £696.70 to £1605.26 due to rent arrears now to the end of the tenancy and supported by the updated rent statement lodged. The Applicant's representative also said that further damages were sought and vouching was lodged. Since that date a further £100 from the tenancy deposit had been applied to damages but had not been entered in to the rent statement as this has been received since 4<sup>th</sup> April 2022. The Tribunal allowed the amendment however given the £100 since received the application was amended to £1505.26. The Respondent had been notified by the Tribunal at his care of sisters address of this amendment. The Applicant's representative said that further damages since 4<sup>th</sup> April 2022 have become known but they

were not instructed to lodge further vouchings. The Tribunal determined in the absence of said vouching that the application should be considered on the sum sought of £1505.26.

There were no other preliminary issues raised.

#### **4. Summary of Hearing**

The Applicant's representative explained the rent for the property in terms of the Private Residential Tenancy was £350 per month and the Respondent had been difficult to obtain payment for rent throughout the tenancy. The rent arrears owed to the Applicant to the end date for the tenancy was £920.26 and damages as adjusted for the additional tenancy amount of £100 was £585. The Applicant's representative referred to the vouchings lodged.

The Applicant's representative sought an Order for Payment for the sum of £1505.26 in terms of Section 71 Private Housing (Tenancies) (Scotland) Act 2016 plus interest at the judicial rate of 8%. The Applicant's representative in discussion submitted that the judicial rate was sought and he had obtained that from previous Tribunals.

#### **5. Findings in Fact/Reasons for Decision.**

- 1. The Tribunal was satisfied that a decision could be made in the absence of the Respondent at the CMD based on the information before the Tribunal. The Respondent had had to be served by Sheriff Officer by the Tribunal and this had been carried out. The Respondent had also been sent Tribunal information to his sisters address which had been used for the tenancy deposit issues and at commencement of the tenancy. The Applicant's representative gave credible evidence supported by the papers lodged. It was in the interests of the parties having regard to the Overriding objective to proceed.**
- 2. The Applicant's representative sought an Order for Payment for the sum of £1505.26. This comprised of rent arrears of £920.26 to the end of the Tenancy and damages vouched of £585.**
- 3. The Tribunal was satisfied on the evidence that the Applicant was the heritable proprietor of the Property as a copy title was lodged with the Application.**
- 4. There was a valid Private Residential Tenancy in place between parties dated 10<sup>th</sup> April 2020. The Respondent left the Property on or around end of February 2022.**
- 5. The rental payment in terms of this agreement was £350 per calendar month.**
- 6. Rent due by the Respondent to the Applicant up to the date of the end of the tenancy in terms of the rent statement lodged was £920.26.**
- 7. Damages as vouched for in terms of the Tenancy and due were £585.**
- 8. The Tribunal was satisfied on balance that it was appropriate to grant a Payment Order for £1505.26.**

9. Accordingly, in terms of Section 71 of the 2016 Act the Tribunal granted a Payment Order against the Respondents.
10. The Tribunal noted that the Applicant's representative sought judicial interest at 8%. The Tribunal determined that a reasonable amount in the Tribunal's judicial discretion was 3% having regard to the overriding objective, the relevant circumstances and Farstad Supply AS v Enviroco Ltd [2013] CSIH 9 where it was determined that interest could reflect current economic conditions.

### 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.

# K Kirk

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Legal Member/Chair

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Date: 08/06/2022