



**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/22/2578**

**Re: Property at 37 Innellan Drive, Kilmarnock, Ayrshire, KA3 1SS (“the Property”)**

**Parties:**

**Mr Robert Morton, Mrs Amber Morton, 18 Thomas Baird Gardens, Kilmarnock, Ayrshire, KA3 1LH (“the Applicant”)**

**Miss Megan Cooksey, 47 Bruce Street, Kilmarnock, Ayrshire, KA1 4LS (“the Respondent”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member) and Mr G Darroch (Ordinary 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 should be granted in favour of the Applicants in the sum of £3515.92.**

**Background**

1. This is a Rule 111 case where the Applicants are seeking to recover rent arrears in the sum of £3515.92. The Applicants lodged a copy of a private residential tenancy agreement that commenced on 5<sup>th</sup> December 2019 and ended in May 2021, and information from their letting agent in relation to outstanding rent.
2. By email dated 7<sup>th</sup> December 2022, the Respondent lodged productions.
3. A Case Management Discussion (“CMD”) took place by telephone conference on 12<sup>th</sup> December 2022. All parties were in attendance. The Respondent indicated that she was opposing the sum sought. It is her position that rent arrears in the sum of £3050 were outstanding. The case was continued to an evidential hearing to determine the sum due in rent arrears. The Respondent was advised to lodge a rent statement showing how she had reached the sum she claimed was due. The Respondent was advised to find out whether a

solicitor could represent her at the hearing, and, if so, to lodge a written note of her defence.

4. A hearing was set down for 14<sup>th</sup> March 2023.
5. By email dated 22<sup>nd</sup> February 2023, the Applicants lodged written representations and productions.
6. By email dated 4<sup>th</sup> March 2023, the Respondent stated:

*I have been meaning to contact you however I have been unfortunately busy to keep in correspondence. I'd like to make you aware that myself and all 3 of my witness are not able to make the Tribunal on the 14th March. I would also like to state I have been in touch with legal aid and the representative is busy on the 14th March and she then is on annual leave until mid April so unfortunately she is not going to take my case on as of right now. I have tried other legal aid companies throughout Ayrshire and Glasgow surrounding areas and each one has told me they do not specialise with housing tribunals. If you can allow a date change for when all 3 of my witnesses are available and I am myself that would be greatly appreciated. Furthermore I would ideally like to try and source another legal aid representative as I feel this would heavily benefit my case.*

7. By email dated 6<sup>th</sup> March 2023, the Respondent responded to a call for clarification by stating:

*Yes I am confirming a postponement of upcoming case management. I can't do the whole of March up until the 9th April.*

8. A response was provided to the Respondent by email dated 9<sup>th</sup> March 2023 as follows:

The Tribunal cannot consider a request for postponement unless it complies with the Procedural Rules. In order to comply with the Rules, you must:

1. Notify the other party of your request for a postponement;
2. Show good reason why a postponement is necessary;
3. Provide evidence as to why you are asking for a postponement.

You have given no information as to why you are not available until 9th April, or why your witnesses are not available on 14th March. Please provide this information with supporting evidence, if available, to the Tribunal and the Applicants as a matter of urgency.

Please be aware, in the absence of a proper application for postponement, that the hearing set down for 14<sup>th</sup> March 2023 is still scheduled to proceed on that date.

9. By email dated 9<sup>th</sup> March 2023, the Respondent replied:

*My witnesses' won't be available until after 2pm on the 14th if there's any chance you can change time of the hearing as this is the only way that can accommodate everyone on my side of things.*

10. By email dated 9<sup>th</sup> March 2023, a response was provided to the Respondent as follows:

The hearing will proceed at 10am on 14<sup>th</sup> March 2023, at which time further discussion will take place regarding the procedure to be adopted for the hearing, and the approximate timescale for calling witnesses. The Respondent's witnesses are not required until the Applicants' case has been heard, and this may take some time. Parties should attend as scheduled at 10am, and witnesses should remain on standby to be called when required.

11. A hearing took place on 14<sup>th</sup> March 2023 by telephone conference. The Applicants were in attendance. The Respondent did not attend. An attempt was made to contact the Respondent by telephone, with no success. The Tribunal decided to adjourn the hearing to another date to allow the Respondent further time to obtain legal representation, and to ensure her witnesses were available. The Tribunal decided to make a Direction dated 14<sup>th</sup> March 2023 to the Respondent in the following terms:

The Respondent is required to provide:

1. The reason for her failure to attend the hearing set down for 14<sup>th</sup> March 2023.
2. A witness list giving full contact details for her witnesses.
3. Full details of attempts made by the Respondent to find legal representation, and details of the current position with regard to legal representation.
4. A rent statement setting out rental payments made to support her previous submission that the sum of £3050 is outstanding.
5. The Respondent's contact details, including a current telephone number.

The said documentation should be lodged with the Chamber no later than close of business 14 days after the date of issue of this Direction.

12. The Respondent did not comply with the Direction of the Tribunal.
13. A further hearing was set down for 21<sup>st</sup> June 2023 and parties were notified of the same on 18<sup>th</sup> May 2023.
14. By email dated 22<sup>nd</sup> May 2023, the Respondent stated as follows:

*Hi I'm unable to attend this tribunal on the 21st as I am on holiday for 2 weeks. I won't actually be in the country.*

15. By email dated 24<sup>th</sup> May 2023, the Respondent confirmed that she was seeking a postponement, stating again that she would be on holiday on the date of the hearing.
16. The following notification was sent to the Respondent:

Any application for postponement must be made in terms of our procedural rules, which require you to:

- 1) Notify all other parties of your request
- 2) Show good reason why a postponement is necessary
- 3) Produce evidence of any fact or matter relied on in support of the application.

Please now ensure that you have complied with the above. We look forward to receiving evidence of your inability to attend, after which the Tribunal will consider your application for postponement.

Please note that, in the absence of a proper application for postponement, the hearing will go ahead as scheduled.

It is also noted that you have failed to comply with the Direction of the Tribunal dated 14th March 2023.

17. By email dated 2<sup>nd</sup> June 2023, the Respondent lodged a screenshot of airline flight and travel information showing a booked flight to Belfast on 21<sup>st</sup> June 2023 to leave at '6.10'. There was no passenger name on the flight and travel information.
18. The Tribunal considered the application for postponement and decided not to grant it, stating as follows:

The Tribunal has considered the Respondent's application for a postponement and has decided not to grant the application. The Respondent has not shown good reason why a postponement is necessary, and she has failed to produce sufficient evidence in support of her application. The Respondent has provided flight information that

includes no passenger name or date of booking. The hearing is due to take place by telephone conference, and the Respondent does not have to attend a venue, or participate from her home address. No reason has been given as to why she cannot participate from elsewhere.

The Tribunal notes that the Respondent has also failed to comply with a Direction of the Tribunal dated 14th March 2023 regarding her failure to attend at the last scheduled hearing, and ordering her to provide information regarding other matters including matters relating to her defence of the application.

For the avoidance of doubt, the hearing scheduled for 10am on 21st June 2023 will proceed.

19. By email dated 6<sup>th</sup> June 2023, the Applicants made the following written representations:

*Due to the lack of engagement by the other party, we took it upon ourselves to check the flight details provided.*

*As per the EasyJet website there is no 06:10am flight from Glasgow to Belfast International on that date. You can verify yourself here: Cheap flights from Glasgow to Belfast Intl from £22.99 | easyJet and screenshots below for your convenience.*

*There is however a 16:10 flight under flight code EZY54. Has this documentation been altered (falsified?) to give the impression that the other party is not available at the scheduled time?*

*You can also see by the 06:30am flight on the same day that the EasyJet format is to use "06:10" i.e., 4 digits, and it would not be in the format provided on the respondent's documentation. We would also suggest, that if you enlarge the EasyJet booking provided, you can see that the '4' for the bag drop time has been tampered with.*

*Considering this, it appears to me that the respondents flight is at 16:10 so we respectfully request that the hearing goes ahead as planned at 10am on Wednesday 21st June.*

20. By email dated 6<sup>th</sup> June 2023, the Respondent provided a further screenshot of the flight and travel information which showed a flight to Belfast on 21<sup>st</sup> June 2023 at 16.10, and stated:

*Hello.*

*In regards to my last email, I had sent the WRONG screenshot. I don't appreciate the fact Robert Morton and his wife are checking up on me AGAIN. I feel heavily stalked and threatened.*

*Attached below is my actual flight ticket, my witnesses' are already on "holiday" I am travelling for a bereavement and would appreciate if this was postponed as all me and witnesses are again unavailable.*

21. The Tribunal considered the Respondent's application for postponement of the hearing and decided not to grant it, stating:

The Tribunal has taken account of previous representations made by the Applicants which suggested that the Respondent altered the airline evidence lodged on 2nd June 2023. Having now reviewed the 'actual flight ticket' lodged by the Respondent on 6th June 2023, it would appear that there is merit in the Applicants' representations that the first document submitted to the Tribunal by the Respondent was amended in order to give the appearance that the Respondent was not available on the morning of 21st June. The Tribunal views any such amendment of evidence by a party as an extremely serious matter. In any event, it is now clear that the Respondent will be available on the morning of 21st June 2023, therefore, the hearing will proceed on that date. The Tribunal notes that no evidence has been provided to substantiate the claim that the Respondent's witnesses are, again, on holiday.

### **The Hearing**

22. A hearing took place by telephone conference on 21<sup>st</sup> June 2023. The Applicants were in attendance. The Respondent was not in attendance. The Tribunal considered the terms of Rule 29. The Tribunal considered that the requirements of Rule 24(1) had been satisfied, and it was appropriate to proceed with the application in the absence of the Respondent. The Tribunal noted that, although the Respondent had claimed to be unavailable on the date of the hearing, stating initially that she would be on holiday and out of the country, and then stating that her unavailability was due to her travelling because of a bereavement, her flight was not due to leave until 16.10 on the afternoon of the date of the hearing, and no reason had been given by the Respondent why she could not be in attendance on the morning of the hearing.
23. The Applicants referred to the rent statement showing that rent was due each month in the sum of £500. The Applicants said there was no merit in the Respondent's claim that the sum of £3050 was outstanding. There had been an agreement that the Respondent, who was having difficulty meeting the rental payments, should pay the sum of £300 for 3 months from October 2020. Thereafter, she was due to pay £600 for 6 months, to make up the difference.

## **Findings in Fact and Law**

- 24.
- (i) Parties entered into a private residential tenancy agreement that commenced on 5<sup>th</sup> December 2019 and ended in May 2021, with rent due in the sum of £500 per month.
  - (ii) Rent lawfully due in terms of the tenancy agreement has not been paid by the Respondent.
  - (iii) The Applicants are entitled to recover rent lawfully due.

## **Reasons for Decision**

25. The Respondent has failed to make payment of rent lawfully due. The Applicants are entitled to recover rent lawfully due in terms of the tenancy agreement between the parties. The Respondent did not provide any evidence or representations to support her position that the sum due was £3050.

## **Decision**

26. An order for payment is granted in favour of the Applicants in the sum of £3515.92.

## **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.**

**Legal Member**

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**21<sup>st</sup> June 2023**  
**Date**