



**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 (“2016 Act”)**

**Chamber Ref:** FTS/HPC/CV/23/0981

**Re:** Flat 4, 24 Park Circus, Glasgow, G3 6AP (“the Property”)

**Parties:**

**Mr William Liam Donnelly, 15 Law Place, East Kilbride, G74 4QL (“the Applicant”)**

**Miss Nasiba Ali, 65 Busby Road, Clarkston, Glasgow, G76 7BW (“the Respondent”)**

**Tribunal Member:**

**Pamela Woodman (Legal Member)**

**Present:**

The case management discussion in relation to case reference FTS/HPC/CV/23/0981 took place at 2pm on Wednesday 14 June 2023 by teleconference call (“**the CMD**”). The Applicant was not present but was represented by Lynne Bryson of Rite Home Ltd (“**the Applicant’s Representative**”). The Respondent was not present and was not represented at the CMD. The clerk to the Tribunal was Caitlin Munro.

**DECISION**

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

**BACKGROUND**

1. An application had been made to the Tribunal on behalf of the Applicant under section 71(1) of the 2016 Act and in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended. More specifically, the application was made in terms of rule 111 (*Application for civil proceedings in relation to a private residential tenancy*) of the HPC Rules.

2. The order sought from the Tribunal was an order for payment against the Respondent in the sum of £3,239.73.
3. The application was dated 27 March 2023, was submitted by the Applicant's Representative and was accompanied by various documents, including copies of the following:
  - a. Scottish private residential tenancy agreement between the Applicant and the Respondent ("**Tenancy Agreement**"), providing for:
    - i. a start date of 1 May 2020;
    - ii. rent of £2,500 per calendar month, payable in advance;
    - iii. the first payment to be paid on 1 May 2020 for the period 1 May 2020 to 31 May 2020;
    - iv. future payments of rent to be received by the Applicant on or before the 1st of the month.

*[The copy provided was unsigned but the start date and monthly rental figure were narrated in the published written decisions of the Tribunal in respect of earlier cases with references FTS/HPC/EV/22/1893 and FTS/HPC/CV/22/1894 between the Applicant and the Respondent in respect of the Property and, in those decisions, were noted as being agreed between the parties. Those published written decisions also narrated that the Respondent was present in person at the case management discussion for those cases.]*

  - b. Order for eviction from the Property dated 8 December 2022 in respect of the case with reference FTS/HPC/EV/22/1893;
  - c. Order for payment for the sum of £25,500 dated 8 December 2022 in respect of the case with reference FTS/HPC/CV/22/1894; and
  - d. Rent schedule from 5 March 2021 up to and including the apportioned rent charged as at 1 January 2023 for part of January 2023 and showing "Rent due" of £28,739.73.
4. A notice of acceptance of the application was issued by the Tribunal dated 13 April 2023 under rule 9 of the HPC Rules, which confirmed that the application paperwork had been received by the Tribunal on 27 March 2023.
5. The Respondent was sent notice of the CMD by letter dated 10 May 2023, which was confirmed (in the certificate of intimation from Paul Miller of Walker Love, sheriff officers) as having been served on 11 May 2023 by posting through the letterbox.
6. The Tribunal's administration team was contacted by the Respondent by e-mail, in which the Respondent appeared to request a postponement of the CMD. The Respondent was asked, in accordance with HPC Rule 28, to provide evidence to

support that request but no evidence was provided and nor were any written submissions provided in advance of the CMD.

7. This decision arises out of the CMD.

### **PRELIMINARY ISSUE**

8. Given that the Respondent had been validly served with notice of the CMD and had not provided evidence to support (what appeared to be) a request to postpone the CMD, the Tribunal decided to proceed with the CMD, having considered the interests of both parties in reaching that decision.

### **PROCEEDINGS, NAMELY THE CMD**

9. The Applicant's Representative confirmed that the amount for which a payment order was sought was £3,239.73, being £2,500 in respect of December 2022 and £739.73 from 1 to 9 January 2023 inclusive – the other £25,500 referred to in the rent schedule being covered by the order for payment issued in respect of the case with reference FTS/HPC/CV/22/1894.

10. The Applicant's Representative confirmed that the order for eviction (obtained with case reference FTS/HPC/EV/22/1893) was implemented on 9 January 2023, and explained that that was why the rent for January 2023 was calculated up to 9 January 2023.

11. The Applicant's Representative also confirmed that no payment had been received since the order for payment had been obtained and so the last payment received from the Respondent was in June 2022.

### **FINDINGS IN FACT**

12. The Tribunal was satisfied, on the balance of probabilities, that rent at a rate of £2,500 per calendar month was payable under the Tenancy Agreement in respect of the Property.

13. An apportionment of rent under the Tenancy Agreement covering 9 calendar days amounted to £739.73, being 9/365 of the annual rent of £30,000 (being 12 months at £2,500 per month).

### **REASONS FOR DECISION**

14. Based on the published written decisions, the Applicant had been present in person at the case management discussion for the earlier cases with references FTS/HPC/EV/22/1893 and FTS/HPC/CV/22/1894.

15. The published written decision for the earlier case with reference FTS/HPC/CV/22/1894 narrated that it was agreed by the parties that "the sum claimed by the Applicant of £25500 was due by the Respondent" (for which the order for payment with the corresponding case reference was issued). In addition, the published written decision for the earlier case with reference

FTS/HPC/EV/22/1893 narrated, as a finding in fact, that “As at 1 December 2022 the Respondent owed the Applicant rent amounting to £28,000.00”. This included the rent due as at 1 December 2022, which was not included in the order for payment (under case reference FTS/HPC/CV/22/1894) as it had fallen due less than 14 days prior to the case management discussion on 8 December 2022.

16. The Tribunal was satisfied, on the balance of probabilities, that the rent payable as at 1 December 2022 (£2,500) and as at 1 January 2023 (£739.73) was due and had not been paid by the Respondent.

17. Accordingly, the Tribunal found, on the balance of probabilities, that £3,239.73 was due and payable by the Respondent to the Applicant.

## **DECISION**

18. The Tribunal granted the application under section 71(1) of the 2016 Act for an order for payment in the sum of £3,239.73 (three thousand two hundred and thirty-nine pounds and seventy-three pence).

## **Right of Appeal**

**In terms of Section 46 of the Tribunals (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.**

**Pamela Woodman**

*14 June 2023*

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**Legal Member (chair)**

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**Date**