



**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/23/1663**

**Re: Property at Flat C, 171 Riverside Road, Kirkfieldbank, Lanark, ML11 9JR (“the Property”)**

**Parties:**

**Homeselect Finance (No 3) Limited, Whittington Hall, Whittington Road, Worcester, WR5 2ZX (“the Applicant”)**

**Mr John Anderson, Flat C, 171 Riverside Road, Kirkfieldbank, Lanark, ML11 9JR (“the Respondent”)**

**Tribunal Members:**

**Jan Todd (Legal Member) and Helen Barclay (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 of the sum of £4,758.50 be granted in favour of the Applicant from the Respondent with interest at the rate of 4% from the date of the decision until payment**

1. This was a case management discussion in respect of an application by the Applicant dated 22<sup>nd</sup> May 2023 for an order for eviction against the Respondent. This was the first calling of the case before a Tribunal.
2. The following documents were lodged with the application:-
  - A copy of the Tenancy Agreement dated with a commencement date of 21<sup>st</sup> January 2019
  - Letters to tenant regarding non-payment of rent dated 9<sup>th</sup> and 16<sup>th</sup> May 2023
  - Rent statement showing sum due to 4<sup>th</sup> April 2023 of £2,750
3. On 1<sup>st</sup> August the Applicant’s solicitor intimated that they wished to increase the sum sought to £4758.50 and submitted a revised rent statement showing this was the sum due from 21<sup>st</sup> July 2023 with no payments since then. This was copied to the Respondent by email.

## **The CMD**

4. The CMD proceeded today by way of teleconference. The Convener made introductions, and explained how the CMD would be conducted over the teleconference. The Applicant was represented by Ms Claire Mullen of T C Young solicitors and another member of TC Young Solicitors, namely Ms Stephanie Callaghan was in attendance as an observer only.
5. The Applicant was seeking an order for payment in the sum of £4758.50 as per Ms Mullen's recent letter requesting an increase in the sum sought.
6. The Respondent did not attend nor was he represented on the teleconference. The Respondent had been served a copy of the application and papers by sheriff officers on 25<sup>th</sup> July 2023 together with a note of the date and time of the teleconference and details of how to join. The Respondent has been given fair notice and the Tribunal therefore felt it was appropriate and fair to continue in his absence.
7. Ms Mullen spoke on behalf of the Applicant and advised that they were seeking an order for payment and an order for eviction of Mr Anderson who was the tenant in the Property. She explained that the Respondent was due to pay rent in the sum of £1,950 for 6 months in advance on 21<sup>st</sup> January 2019 and six monthly thereafter. She confirmed that as per the most recent rent statement which she had lodged he was now in arrears of £4,758.50 the last payment to account having been made on 4<sup>th</sup> April of £500 and that no further payments had been made.
8. Ms Mullen submitted that the Respondent should always be in credit as the rent is due 6 monthly in advance and he has not been since January 2021. She advised that the Respondent was difficult to contact and there had been no response to the Applicants letters in May nor their most recent letter in August 2023 regarding rent arrears. Ms Mullen advised that the Applicant had made an offer earlier in the year to repay some of the arrears but had not maintained this and there had been no communication at all since April.
9. The Tribunal questioned Ms Mullen about how the rent arrears were made up given the rent statement was not entirely clear and after a short break Ms Mullen was able to clarify the rent was initially charged monthly which was shown on the rent statement and then corrected to show rent due on 21<sup>st</sup> January and 21<sup>st</sup> July in 6 monthly payments.

## **Facts**

1. The Applicant and the Respondent entered into a lease of the Property which commenced on 21<sup>st</sup> January 2019.
2. The Respondent is still occupying and in control of the Property and the tenancy is continuing.
3. The Rent due was initially £1,950 for 6 months payable in advance in terms of the lease.
4. The rent was recently increased to £2,008.50 per 6 months.
5. The current rent contractually due and not paid from 21<sup>st</sup> July 2023 is £4,758.50.
6. The last payment made was on 4<sup>th</sup> April 2023 for £500.

7. The Respondent has failed to communicate or respond to the Applicant regarding the rent arrears and has made no response to this application.

- **Reasons for Decision**

1. The parties have entered into a lease where the Respondent has leased the property from the Applicant and has agreed to pay £1,950 six monthly in advance on 21<sup>st</sup> January 2019 and every 6 months thereafter in rent.
2. The Respondent has failed to pay the full rent due. The Applicant is seeking an order for eviction simultaneously as this order.
3. The Respondent has not made any written representations or attended this CMD. The Applicants rent statement shows that no rent has been paid from 4<sup>th</sup> April 2023 and that a further 6 months of rent became due on 21<sup>st</sup> July 2023.
4. The Tribunal accepts the written evidence and verbal statements made by the Applicant's representative who the Tribunal found clear and credible in her evidence that the rent due and outstanding as of today's date is £4758.50. In the absence of any representations from the Respondent the Tribunal finds it fair and appropriate to make an order for payment for that sum today. The Applicant is seeking interest at 8% on the sum sought but as there is no specific provision for interest in the lease the Tribunal determines that interest should be granted at the rate of 4% on the sum outstanding from today's date.
5. There being no application for time to pay the Tribunal makes an order for payment of the sum claimed as stated above.

- **Decision**

An order for payment of the sum of £4,758.50 with interest at the rate of 4% is granted.

## **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 21/08/2023**