



**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/21/0574**

**Re: Property at 17 Irvine Street, Glenmavis, ML6 0NP (“the Property”)**

**Parties:**

**Mrs Janet Reid, C/O Independent MPS, 23 Stirling Street, Airdrie, ML6 0AH (“the Applicant”)**

**Lisa Marie Mustoe, Mr Allan Black, Greensdykeside Farm, Longriggend, ML6 7TT; UNKNOWN, UNKNOWN (“the Respondents”)**

**Tribunal Members:**

**Petra Hennig-McFatriidge (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order for the amount of £3,850 by the Respondents to the Applicant should be granted.**

**Background and Case Management Discussion**

1. The application for an order for payment of rent arrears under S 71 of the Private Housing (Tenancies) (Scotland) Act 2016 arising from a Private Residential Tenancy Agreement between the parties was made by the Applicant's representatives Independent MPS on 1 March 2021.
2. The following documents were lodged to support the application:
  - a. Copy tenancy agreement
  - b. Rent statement for the period of 3 September 2020 to 28 February 2021
3. The application was for a payment order in the sum £3,850.00 and indicated as the Rule applicable Rule 111 of the Procedural Rules.

4. On 4 June 2021 the first named Respondent was served with the application and accompanying documents for the Case Management Discussion (CMD) on 14 July 2021. The second named Respondent was served through service by advertisement in terms of rule 6A of the Procedural Rules. The Tribunal was satisfied that the Respondents had the required notice of the CMD as set out in Rules 17 (2) and 24 (2) of the Procedural Rules.
5. No written representations from the Respondent were received by the Tribunal.
6. The CMD took place on 14 July 2021 by telephone conference call.
7. The Applicant's representative Ms Hill participated on behalf of the Applicant. The Respondents both participated.
8. The Applicant's representative moved for a payment order for the amount of £3,850 as stated in the application.
9. The Respondent Mr Black, who was authorised verbally at the CMD to speak on behalf of both Respondents stated that he agreed that there are rent arrears of £3,850 but enquired what effect the release of the deposit had on this sum. Ms Hill explained that the deposit of £550 had been released to the Applicant for cleaning and garden work required after the property was left by the Respondents and that this had been awarded for that purpose by Safe Deposits Scotland (SDS). Mr Black confirmed that a written process regarding the deposit had been carried out by SDS. He did not dispute that the amount stated in the application remains outstanding. He stated he already is subject to a wages arrestment and could offer £20 per fortnight for payment of the arrears.
10. The Tribunal had not received an application for a time to pay direction from the Respondents and the legal member explained that such an application could not be successful in any event at the payment rate offered as it would take in excess of 5 years to clear the arrears at that rate.
11. The Tribunal advised the Respondents that if an order is granted and there is a problem with payment they can still make an application for a time to pay order at a later stage and to obtain advice on the matter e.g. from the CAB and the Tribunal website.

#### **Findings in Fact:**

1. The property was let on a Private Residential Tenancy Agreement commencing on 28 February 2020
2. The parties are the landlord and tenant of said Tenancy Agreement.
3. The tenants moved out on 30 March 2021 and returned the keys to the property on 7 April 2021.
4. The monthly rent for the property is £550 payable in advance on the 28th day of the month.
5. Between 3 September 2020 and 28 February 2021 the Respondents accumulated rent arrears of £3,850. These arrears remain outstanding.
6. The deposit of £550 was released to the Applicant through SafeDeposits Scotland for other sums due by the Respondents.
7. As the Respondents were joint tenants they are jointly and severally liable for payment of the arrears.

#### **Reasons for Decision:**

1. The Tribunal considered that the material facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:  
Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

(d) discussing what witnesses, documents and other evidence will be required;

(e) discussing whether or not a hearing is required; and

(f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

2. However, in terms of Rule 18 of the Rules of Procedure:

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

3. The documents lodged are referred to for their terms and held to be incorporated herein.

4. The Tribunal did not consider that there was any need for a hearing as the Respondents admitted the rent arrears.

5. The Tribunal makes the decision on the basis of the documents lodged by the Applicant and the information provided by the Applicant's representative and the Respondents at the CMD.

6. The Respondent had fair notice of the representations of the Applicant forming the reasons for the application and has not challenged these.

7. The Tribunal is thus satisfied that the Respondent had entered into a Private Residential Tenancy Agreement with the Applicant for the property with a monthly rental charge of £550 and rent arrears of £3,850 had accrued. These remain outstanding at the date of the CMD. No time to pay application had been submitted.

9. Although the Respondents at the CMD made an offer of payment at the rate of £20 per fortnight towards the arrears, the Tribunal would not be able to grant a time to pay direction for that payment as the repayment of the arrears at that rate would exceed the 2 year period for repayment considered reasonable for such a direction. It will be a matter between the parties whether the Applicant will accept a payment plan.

10. The Applicant is entitled to a payment order for the sum of £3,850 for the rent arrears as shown in the rent statement to 28 February 2021 as claimed in the application.

**Decision:**

**The Tribunal grants the order for payment of the amount of £3,850 by the Respondents to the Applicant**

**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.**

**P Hennig-McFatridge**

**Petra Hennig McFatridge  
Legal Member/Chair**

**14 July 2021  
Date**