



**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/20/0685**

**Re: Property at Whitbrae House, East Brucehill, New Deer, Turriff, AB53 6YJ  
("the Property")**

**Parties:**

**Mr David McAllan, Mrs Sarah McAllan, 1006 Country Club Crescent, London,  
Ontario, N6C 5S1, Canada ("the Applicants")**

**Miss Claire Louise Rose, Mr Stuart Roy Berry, The Shieling, Logie Newton,  
Huntly, AB54 6BB; The Shieling, Logie Newton, Huntly, AB54 6BB ("the  
Respondents")**

**Tribunal Members:**

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

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the  
Tribunal") determined that a payment order for the amount of £12,056.40 by  
the Respondents to the Applicants 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 on 26 February 2020.
2. The following documents were lodged to support the application:
  - a. Tenancy agreement of a Private Residential Tenancy for the property commencing 1 February 2019
  - b. Rent statement for the period 2 January 2019 to 1 July 2020
  - c. TSB account statements of the Applicant.
  - d. Rent Schedule and payment history narrative
  - e. Report disclosing new address for Respondents

3. The application was initially for a payment order in the sum £6,500 and indicated as the Rule applicable Rule 70 of the Procedural Rules.
4. In emails of 13 August 2020 and 5 November 2020 the Applicants' representative sought an amendment of the sum to £12,071.92 and asked for the application to be amended to show that it was made under Rule 111 of the said Procedural Rules.
5. A first Case Management Discussion (CMD) had taken place on 5 October 2020.
6. The CMD note of the same day and the direction issued by the First -tier Tribunal are referred to for their terms.
7. The Respondents were served with the case papers and the CMD notification by Sheriff Officers on 12 November 2020 at the new address identified in the report of Nelson James dated 14 October 2020. 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 Procedure Rules.
8. No representations from the Respondents were received by the Tribunal.
9. The second Case Management Discussion (CMD) took place on 4 December 2020 by telephone call. Only the Applicants' representative Ms Monalisa Swira from Friends Legal took part.
10. At the CMD she confirmed that no further contact had been made by the Respondents. She updated the arrears figure to £12,056.40 as set out in the rent statement lodged on 5 November 2020 and confirmed that these arrears remained outstanding.
11. She confirmed the Respondents had been evicted from the property on 20 July 2020.
12. She confirmed that the deposit had been paid to the Applicants and that the amount due is thus the arrears amount shown in the rent statement less £1,250 deposit. With regard to the £1,000 rent payment in June 2019 she explained that this reflected a rent reduction for that month and not a partial payment of rent as initially stated in the application.
13. The amount due as of the date of the CMD is thus £12,056.40
14. Ms Swira moved the amendments to the application including the amendment to the current sum outstanding.
15. Because the written amendment dated 13 August 2020 stated the sum of £12,071.92 and the sum sought at the CMD was now £12,056.40, the Tribunal considered that as this sum was lower, the Respondents did have sufficient notice of the amendment to the final sum due. The Tribunal allowed the amendment of the application to the up to date sum and the correct Rule in terms of Rules 13 and 14A of the Procedural Rules as these had been notified to the Respondent with the served case papers more than 14 days in advance of the CMD

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

1. The property was let on a Private Residential Tenancy Agreement commencing on 1 February 2019.
2. The parties are the landlord and tenant of said Tenancy Agreement.
3. The tenancy terminated when the Respondent was evicted on 20 July 2020.
4. The monthly rent for the property was £1,250 payable on the first day of the month in advance.
5. Rent arrears accrued as per the rent statement

6. The arrears of rent due and outstanding as at the date of the CMD on 4 December 2020 are £12,056.40

**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 there had been no representations from the Respondents and the application had not been opposed. The facts of the case as set out in the application as amended and further spoken to at the CMD were not in dispute.

5. The Tribunal makes the decision on the basis of the documents lodged by the Applicants and the information given at CMDs.

6. Clause 8 of the Tenancy Agreement shows a monthly rental charge payable at the first day of the month of £1,250. In terms of the Tenancy Agreement both tenants are jointly and severally liable for payment of the rent.

7. No payments were made for the full rent for 10 months between September 2019 and June 2020. No payments of the pro rata rent for July 2020 to the end of the tenancy were made by the Respondents. No payments have been made since the date of eviction. The rent statement shows rent arrears of £13,306.40 accrued to the end of the tenancy on 20 July 2020

8. The Deposit of £1,250 was released to the Applicants, leaving a total sum of £12,056.40 outstanding.

9. The Respondents had received due notice of the final amount in the case papers served on 12 November 2020. The Respondents made no representations and the amount is thus not in dispute.

10. The outstanding amount of rent due to be paid by the Respondents to the Applicants is thus £12,056.40

**Decision:**

**The Tribunal grants the order for payment of the amount of £12,056.40 by the Respondents to the Applicants.**

**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.**

**Petra Hennig McFatridge**

**Petra Hennig McFatridge  
Legal Member/Chair**

**4 December 2020  
Date**