



**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/22/0606**

**Re: Property at 1/3 - 308 Clyde Street, Glasgow, G1 4NP (“the Property”)**

**Parties:**

**Mr Amer Rafique, Mrs Nosheen Rafique, 115 Fenwick Road, Giffnock, G46 6JB (“the Applicants”)**

**Mr Ryan Morgan, 1/3 308 Clyde Street, City Centre, Glasgow, G1 4NP (“the Respondent”)**

**Tribunal Members:**

**Nicola Irvine (Legal Member) and Elaine Munroe (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an order for payment against the Respondent in favour of the Applicants in the sum of £8,250.00**

**Background**

1. The Applicants made an application to the Tribunal dated 2 March 2022 seeking an order for payment in terms of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules and Procedure) Regulations 2017 (“the 2017 Rules”).
2. This application called alongside a related application which proceeds under chamber reference FTS/HPC/EV/22/0618.

3. These applications previously came before the Tribunal for a Case Management Discussion (“CMD”) on 24 May 2022 and a Hearing on 2 August 2022. Reference is made to the Notes and Notices of Direction issued following the CMD and Hearing. The Notes and Notices of Direction in respect of the Hearing on 2 August 2022 were intimated to the Respondent by sheriff officer on 11 August 2022. A further Hearing was assigned for 8 September 2022.
4. On 30 August 2022, the Tribunal received an email from the Applicants’ representative seeking to increase the sum sued for to £8,250. That email was accompanied by an up to date rent statement, showing the total balance of rent arrears as £17,250.
5. At 10am on 8 September 2022, the Tribunal received a telephone call from the Respondent’s father advising that the Respondent was unwell and unable to participate in the Hearing.

### **The Hearing**

6. The Hearing took place by conference call. Both Applicants participated in the Hearing and were represented by Miss Lithgow. The Respondent did not participate and was not represented at the Hearing.
7. The Applicants’ representative indicated that, notwithstanding the call made to the Tribunal on the morning of the Hearing, the Applicants wished to proceed with the Hearing today.
8. Having considered matters, the Tribunal proceeded with the Hearing notwithstanding the absence of the Respondent. The Applicants’ representative advised that she intended to lead evidence from both Applicants.

## Summary of evidence

### Mr Amer Rafique

9. The Applicants appointed Pacitti Jones as their letting agent in respect of the property. The Respondent moved into the property in September 2020. The parties entered into a Private Residential Tenancy. Rent was payable at the rate of £750 per month. The Respondent made one payment of rent on 25 September 2020 and has not made any payments since that date. The rent statement produced accurately reflects the outstanding balance of rent arrears.
10. The Respondent has made many promises to pay rent and to enter into a payment plan but has failed to make payment.
11. The Applicants have been prejudiced by the Respondent's failure to pay rent; they have a mortgage over the property and have a liability to pay factors' fees. The Applicants have had to use their savings in order to meet these outgoings. The Applicants have been worrying about the financial impact on them arising from the Respondent's failure to pay rent.
12. The Respondent made a report to the Applicants' letting agent regarding a problem with the boiler within the property. The Applicants' instructed a repair of that boiler. The Applicants' have complied with all of their obligations in terms of the tenancy agreement.

### Mrs Nosheen Rafique

13. The Applicants were prepared to consider any repayment proposals the Respondent had. The Respondent contacted the Applicants' letting agent by email indicating that he would pay the rent arrears due, but no payment or proposals for payment were forthcoming.

14. When the Applicants gained entry to the property for inspection, they noted that the walls had been damaged and that a mirror had been smashed. They were concerned about the condition of the property.
15. Mrs Rafique owns one other rental property. The Applicants have had to access savings in order to meet the mortgage and common charges associated with the property occupied by the Respondent.

### **Submissions**

16. The Applicants' representative referred to an email exchange she had with the Respondent. By email of 7 April 2021, the Applicants' representative provided details of organisations the Respondent could contact for financial assistance. The Respondent was advised in that email that the Applicants were prepared to discuss a payment plan in relation to rent arrears. The Applicants have already obtained an order for payment in respect of rent arrears for the sum of £9,000. The total level of rent arrears is now £17,250. The Applicants' representative sent an email to the Respondent on 24 May 2022 providing bank details once again to enable the Respondent to make payment. A reminder email was sent on 31 May 2022. The Applicants' representative received no response. The Applicants sought an order for payment in the sum of £8,250.

### **Findings in fact**

17. The parties entered into a Private Residential Tenancy which commenced 28 September 2020.
18. Rent was payable by the Respondent at the rate of £750 per month, in advance.
19. As at 28 August 2022 the total arrears of rent due by the Respondent amounted to £17,250.

## Reason for decision

20. The application was intimated to the Respondent by letter of 7 April 2022. In that letter, the Respondent was invited to lodge written representations by 28 April 2022. The Tribunal noted that no written representations were lodged by the Respondent.
21. At the CMD on 24 May 2022, the Respondent accepted that he owed arrears of rent but could not say whether the rent statement lodged was accurate. He explained that he was unable to work for a period of time due to illness and was unable to pay rent during that time. His position was that he had made attempts to agree a payment arrangement with the Applicants' representative, without success. He advised the Tribunal that he was prepared to pay ongoing rent as it fell due and £300 per month towards arrears. The Tribunal issued a Notice of Direction to the Respondent following the CMD, requiring him to lodge documentation supporting his position. Although the correspondence sent to the Respondent was returned undelivered to the Tribunal, a further Notice of Direction was issued to the Respondent by sheriff officer on 11 August 2022. The Respondent failed to comply with the Direction.
22. Shortly after the Hearing on 2 August 2022 started, the Respondent sent an email to the Tribunal indicating that he was awaiting contact from his legal representative. Having taken account of that email and despite opposition from the Applicants representative, the Tribunal adjourned the Hearing on 2 August 2022 to allow the Respondent an opportunity to instruct his legal representative. The Tribunal has not received any communication from a legal representative acting on behalf of the Respondent.
23. After the Hearing on 8 September 2022 commenced, the Tribunal received an email from the Respondent (at 10:09am) stating "I'm really ill and took a test and it's positive for covid, I'm sorry I couldn't of made the phone call today I'm just really ill."
24. The Tribunal allowed the Applicants to amend the sum sued for to £8,250. The Tribunal found the Applicants to be credible and reliable. The

Respondent had several opportunities to lodge documentation supporting his position. No documentation was lodged or detailed submissions made challenging the accuracy of the rent statement. The Tribunal noted from the supporting documents lodged that the Respondent accepted that arrears of rent were due. The Applicants already hold an order for payment against the Respondent in the sum of £9,000. The Tribunal was satisfied that the rent statement was accurate and that the Applicants were entitled to a payment order in the sum of £8,250.

### **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.**

# N. Irvine

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Legal Member/Chair

8 September 2022

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Date