



**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/20/2393**

**Re: Property at 48 Westerton Terrace, Carronshore, Falkirk, FK2 8HP (“the Property”)**

**Parties:**

**Mr Stewart Smyth, 16 Broadfield Crescent, Fernhill Heath, Worcester, WR3 7TN (“the Applicant”)**

**Mr Matthew Salisbury, 48 Westerton Terrace, Carronshore, Falkirk, FK2 8HP (“the Respondent”)**

**Tribunal Members:**

**Petra Hennig-McFatrige (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 £5,520.00 by the Respondent 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 Harper Macleod LLP on 12 November 2020.
2. The following documents were lodged to support the application:
  - a. Copy tenancy agreement
  - b. Rent Statements, the latest of which covers the arrears up to 6 January 2021
3. The application was originally for a payment order in the sum £4,600 and indicated as the Rule applicable Rule 111 of the Procedural Rules.
4. On 3 December 2020 the Respondent was served by Sheriff Officers with the case papers and the notification for the Case Management Discussion (CMD) on

7 January 2021. The Tribunal was satisfied that the Respondent had the required notice of the CMD as set out in Rules 17 (2) and 24 (2) of the Procedural Rules.

5. No representations from the Respondent were received by the Tribunal.
6. By correspondence of 8 December 2020 the Applicant's representatives moved for an amendment of the sum outstanding to £5,060 and provided an updated rent statement.
7. By correspondence of 6 January 2021 the Applicant's representatives moved for an amendment of the sum outstanding to £5,520 and provided an updated rent statement.
8. The CMD took place on 7 January 2021 by telephone conference call.
9. Neither the Applicant nor the Respondent participated. The Applicant was represented by Ms Grosvenor from Harper Macleod LLP.
10. Ms Grosvenor confirmed that neither the Applicant nor the representatives had had any contact from the Respondent. The Applicant had also tried to gain access to the property due to water ingress having been reported from the flat below the property and the Respondent had not cooperated with this. Proceedings are pending for the Applicant to gain entry to the property.
11. Only one payment of rent had been received since the commencement of the tenancy on 3 January 2020. Thereafter the arrears accrued as shown on the Rent Statement lodged. The arrears of rent were now £5,520 which represents 12 months of unpaid rent.
12. She moved the amendment of the application to £5,520, stating that because of the timing of the monthly rental payments due under the tenancy agreement on the 3rd day of the month it was not possible to make the application to amend for the final amendment 7 days prior to the CMD as the date fell within that 7 day period. However, she had previously applied for the relevant amendments after further rent had been due and made the amendment request prior to the CMD. Thus the amendment in terms of Rule 13 of the Procedural Rules should be allowed.
13. She moved for a payment order for the sum of £5,520.

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

1. The property was let on a Private Residential Tenancy Agreement commencing on 3 January 2020.
2. The parties are the landlord and tenant of said Tenancy Agreement.
3. The tenancy is ongoing.
4. The monthly rent for the property was £460 payable monthly in advance on the 3rd day of the month.
5. Rent arrears accrued as per the Rent Statement up to 6 January 2021
6. The arrears of rent due and outstanding as at the date of the CMD on 7 January 2021 are £5,520.

#### **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 Respondent and the application had not been opposed.

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

6. The Tribunal allows the amendment of the application to the sum of £5,520. The Respondent knows the terms of the tenancy agreement and, having missed the payment for the current month, is aware that the sum of the arrears has increased. It was not possible for the Applicant to amend the sum more than 7 days prior to the CMD as the most recent rent only fell due on 3 January 2021. The Respondent was advised of the amendment prior to the CMD by the Tribunal on 6 January 2021. He did not object. In all the circumstances the Tribunal considered that the amendment should be allowed in terms of Rule 13 (b) of the Procedural Rules.

7. The Respondent had fair notice of the representations of the Applicant forming the reasons for the application and has not challenged these. As no

representations were received from the Respondent by the Tribunal, the facts of the case are not in dispute.

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 £460 and a start date of 3 January 2020. The Tribunal is further satisfied that the rent arrears are as set out in the Rent Statement to 6 January 2021 showing the complete lack of any payments since February 2020 and the current arrears of £5,520.

8. The Applicant is entitled to a payment order for the sum of £5,520 as claimed in the application for rent arrears accrued under the tenancy agreement to date.

**Decision:**

**The Tribunal grants the order for payment of the amount of £5,520 by the Respondent 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.**

**Petra Hennig McFatridge  
Legal Member/Chair**

**7 January 2021  
Date**