



**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) 2016 Act**

**Chamber Ref: FTS/HPC/CV/18/3483**

**Re: Property at 49 The Fairways, Bothwell, South Lanarkshire, G71 8PB (“the  
Property”)**

**Parties:**

**Dr Ryan Itty George, 17 Sunningdale Wynd, Bothwell, G71 8EQ (“the  
Applicant”)**

**Miss Kelly Barton, 2 Kilpatrick Way, Uddingston, G71 6TX; and  
Mr Robert Kirkwood, whose present whereabouts are unknown (“the  
Respondents”)**

**Tribunal Members:**

**Joel Conn (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that**

1. This is an application by the Applicant for civil proceedings in relation to a private residential tenancy in terms of rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”), namely an order for payment of rent arrears. The tenancy in question was a Private Residential Tenancy Agreement of the Property by the Applicant to the Respondents dated 2 April 2018 and with a start date on 3 April 2018.
2. The application was dated 20 December 2018 and lodged with the Tribunal shortly thereafter. The order sought in the application was for £5,500 of rent arrears being five months of unpaid rent of £1,100 per month falling due from the payment dates in August to December 2018. The lease for the said tenancy also accompanied the application and bore a rental payment of £1,100 per month, payable on the 3<sup>rd</sup> of each month. On 4 March 2019, the Applicant’s solicitor sought to amend the application to seek arrears of £6,548.77 being the

arrears previously sought along with pro-rated arrears from 3 January to 1 February 2019 (the date that the Respondents vacated the Property) of £1,048.77. This amendment would have formed part of the application papers intimated on the Respondents for the CMD.

### **The Hearing**

3. On 30 April 2019, at a case management discussion ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting at Glasgow Tribunals Centre, I was addressed by Kirstie Donnelly, Solicitor of Bannatyne Kirkwood France & Co, the solicitor for the Applicant.
4. There was no appearance by the Respondents. Further to the Respondents vacating the Property on 1 February 2019, the Applicant's agent had sought to trace them. A new address was found for the First Respondent and provided to the Tribunal. The First Respondent had received intimation of the CMD by letter on 22 March 2019 to that address. She made contact with the Tribunal to request papers and the application papers were sent to her by recorded delivery letter (signed for on 26 March 2019). She had made no other contact with the Tribunal.
5. The Second Respondent's current whereabouts were unknown and a request for service by advertisement was lodged by the Applicant's agent on 5 March 2019. Service by advertisement on the Second Respondent was made between 29 March 2019 and 29 April 2019. He made no contact with the Tribunal.
6. The Applicant's agent confirmed that no contact had been received from the Respondents to her firm, the Applicant, or the Applicant's letting agent since the Respondents vacated the Property. In particular, the Applicant's solicitor stated that at no point was any dispute regarding the rent intimated nor any reason provided why rent may have been withheld from payment.
7. In all the circumstances, I was satisfied that there was no attempt by the Respondents to provide submissions disputing the application or the amendment and I was satisfied to consider the application in full at the CMD in the absence of the Respondents.
8. The application did not seek interest on the arrears but the Applicant's agent sought interest in terms of the Rules at 8% from the date of any order granted. The Applicant's agent confirmed no order in respect of expenses was sought.

### **Findings in Fact**

9. On 2 April 2018, the Applicant let the Property to the Respondents by a Private Residential Tenancy with a start date of 3 April 2018 ("the Tenancy").
10. Under the Tenancy, the Respondents were to make payment of £1,100 per month in rent to the Applicant on the 3rd of each month.

11. On 20 December 2018, the Applicant raised proceedings for an order for payment of the rent arrears of £5,500.
12. As of 20 December 2018, there was unpaid rent of £5,550 due by the Respondents to the Applicant in terms of the Tenancy being the rent due on the 3<sup>rd</sup> of each month from August to December 2018 (covering the period from 3 August 2018 to 2 January 2019).
13. The Respondents vacated the Property on 1 February 2019. Pro-rated rent due for 3 January to 1 February 2019 was £1,048.77.
14. On 4 March 2019, the Respondents were thus in arrears under the concluded Tenancy of £6,548.77, being five months consecutive unpaid rent due on 3 August, 3 September, 3 October, 3 November, and 3 December 2018 and pro-rated rent for 3 January to 1 February 2019.
15. The Respondents provided no evidence of payment of any part of the said unpaid rent of £6,548.77 nor dispute that the said unpaid rent was due in full.
16. The CMD was competently intimated by the Tribunal upon the First Respondent by letter and upon the Second Respondent by advertisement.

### **Reasons for Decision**

17. The application was in terms of rule 111, being an order for civil proceedings in relation to a private residential tenancy. I was satisfied, on the basis of the application and supporting papers, and the amendment lodged, and the oral submissions provided by the Applicant's agent at the CMD, that rent arrears of £6,548.77 were outstanding as at the date of the CMD for the period to conclusion of the Tenancy.
18. I was satisfied that the necessary level of evidence for such civil proceedings had been provided. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal and I was satisfied to make a decision at the CMD to award the amended sum sought of £6,548.77.

### **Decision**

19. In all the circumstances, I was satisfied to make the decision to grant an order against the Respondents jointly and severally for payment of the sum of £6,548.77 to the Applicant with interest at 8% per annum from today's date until payment.

### **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.

Joel Conn

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Legal Member/Chair

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Date

30 April 2019