



**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/19/3730**

**Re: Property at 14/6 Wardieburn Place East, Edinburgh, EH5 1PW (“the Property”)**

**Parties:**

**Ms Elizabeth Law, 27 Reid Terrace, Edinburgh, EH3 5JH (“the Applicant”)**

**Ms Arleta Elzbieta Cwirzewicz, 14/6 Wardieburn Place East, Edinburgh, EH5 1PW (“the Respondent”)**

**Tribunal Members:**

**Andrew McLaughlin (Legal Member)**

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

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

- **Background**

This was an Application for a Payment Order in respect of a Private Residential Tenancy between the parties in which the Applicant was the landlord and the Respondent was one of the tenants of 14/6 Wardieburn Place East, Edinburgh, EH5 1PW.

The Applicant was seeking a Payment Order in respect of rent arrears for the months of August, September, October and November 2019 said to be lawfully due but unpaid in respect of the tenancy. The tenancy agreement lodged with the Application revealed that there had originally been two tenants, the Respondent and another tenant, Jerzy Piotr Grabowski. The Application also enclosed bank statements that appeared to show the history of the rental payments received relative to the tenancy. It appeared no payments had been made for the months

referred to in the Application. The tenancy also stated in “*Section 2: Glossary of Terms and Interpretation*”

*“Jointly and severally liable: where there are two or more Joint Tenants, each Joint Tenant is fully liable to the Landlord(s) for the obligations of the Tenant under this agreement including, in particular, the obligation to pay rent.”*

- **The Case Management Discussion**

The Application called for a Case Management Discussion at 11:30 am on 28 January 2020 at Riverside House, 502 Gorgie Road, Edinburgh, EH11 3AF.

The Application and the details of the Case Management Discussion had been served on the Respondent by Sheriff Officers on 19 December 2019. The Tribunal was satisfied that the Respondent had had fair notice of the Case Management Discussion and decided to proceed in her absence.

The Applicant was present and invited the Tribunal to make a Payment Order for unpaid rent for the months of August, September, October and November 2019. The contractual rent was £785.00 per month but the Applicant only wished rent calculated at the rate of £649.09 for each month. This is because the Applicant felt sorry for the Respondent to a certain extent as Jerzy Piotr Grabowski left the tenancy following a police incident at the end of July 2019. Although not referred to in the Application, the Applicant also asked for a sum to be accounted for the month of December as the Respondent did not leave the property until 20 December 2019.

The Applicant also wished interest to run on any award made.

- **Findings in Fact**

The Tribunal made the following findings in fact:

- I. The Applicant and the Respondent were parties to a Private Residential Tenancy in respect of 14/6 Wardieburn Place East, Edinburgh, EH5 1PW.
- II. There had originally been another tenant, Jerzy Piotr Grabowski, who had left the property at the end of July 2019.
- III. Both tenants were jointly and severally liable for payment of the rent in respect of the tenancy.
- IV. The rent due was the sum of £785.00 per month.
- V. The Respondent had fallen into rent arrears and made no payment towards the rent for the months of August, September, October and November 2019.
- VI. This rent was lawfully due but remained unpaid.

VII. The Applicant elected to claim a lesser amount than that which she may have been entitled to claim in this Application for her own discretionary reasons.

VIII. The Application makes no reference of any intention to claim rent for the month of December 2019.

- **Decision.**

Having made the above findings in fact and having considered the Application and having heard from the Applicant, the Tribunal decided to grant the Application and to make a Payment Order in favour of the Applicant against the Respondent for the sum of £2,596.36.

The Tribunal decided that interest should run on the sum awarded at the rate of eight per cent per year from today's date until payment.

The Tribunal declined to allow any sum to be claimed for alleged rent arrears for the month of December 2019 as this had not been referred to in the Application and the Respondent had not therefore had fair notice of this potential head of claim.

### **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.**

**A. M**

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Legal member/Chair

28/1/2020  
\_\_\_\_\_  
Date