



**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/20/2447**

**Re: Property at 37 Orchardgate, Cupar, KY15 5AG (“the Property”)**

**Parties:**

**Mrs Rhona van Rensburg, 18 Charles Jarvis Court, Cupar, KY15 5EJ (“the Applicant”)**

**Ms Vicky Morrison, 55 Orchardgate, Cupar, KY15 5AG (“the Respondent”)**

**Tribunal Members:**

**Neil Kinnear (Legal Member)**

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

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

**Background**

This is an application for a payment order dated 19<sup>th</sup> November 2020 and brought in terms of Rule 111 (Application for civil proceedings in relation to a private residential tenancy) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant sought in her application payment of arrears in rental payments of £2,817.58 in relation to the Property from the Respondent, and provided with her application copies of the private residential tenancy agreement and rent arrears statement.

The private residential tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*, and the procedures set out in that Act appeared to have been correctly followed and applied.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 7<sup>th</sup> January 2021, and the Tribunal was provided with the execution of service.

## **Case Management Discussion**

A Case Management Discussion was held at 11.30 on 11<sup>th</sup> February 2021 by Tele-Conference. The Applicant did not participate, but was represented by Mr Kemp, solicitor. The Respondent did not participate, nor was she represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Tribunal was invited by Mr Kemp with reference to the application and papers to grant an order for payment of the sum of £2,817.58. The Respondent vacated the Property on 18<sup>th</sup> August 2020, and had made no payment in respect of the arrears accumulated to that date since her departure. The Applicant had been repaid the tenancy deposit, and deducted that from the rent arrears to calculate the sum sought.

## **Statement of Reasons**

The jurisdiction of the Tribunal in relation to Private Residential Tenancies, such as that which applied to the Property, is set by statute. Section 71(1) of the *Private Housing (Tenancies) (Scotland) Act 2016* provides:

### **“First-tier Tribunal's jurisdiction**

- (1) In relation to civil proceedings arising from a private residential tenancy—
  - (a) the First-tier Tribunal has whatever competence and jurisdiction a sheriff would have but for paragraph (b),
  - (b) a sheriff does not have competence or jurisdiction.
- (2) For the purposes of subsection (1), civil proceedings are any proceedings other than—
  - (a) the prosecution of a criminal offence,
  - (b) any proceedings related to such a prosecution.”

The Tribunal accordingly has jurisdiction to hear civil proceedings arising from a private residential tenancy such as between the parties in this application.

The Tribunal considered the terms of the private residential tenancy agreement, the rent arrears information provided, and the submissions made by Mr Kemp, and was satisfied that these disclosed an outstanding balance of rent arrears of the sum sought of £2,817.58, which sum remains outstanding. Rental of £590.00 per month

was payable in advance in terms of clause 7 of the private residential tenancy agreement.

Accordingly, the Tribunal shall make an order for payment of that sum.

### **Decision**

In these circumstances, the Tribunal will make an order for payment by the Respondent to the Applicant of the sum of £2,817.58.

### **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 Kinnear

11/02/2021

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**Legal Member/Chair**

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**Date**