



**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/22/2190**

**Re: Property at Flat 3 28 Fernieside Drive, Moredun, Edinburgh, EH17 7BF (“the Property”)**

**Parties:**

**Castle Rock Edinvar in Association with Places for People Scotland Limited, 1 Hay Avenue, Edinburgh, EH16 4RW (“the Applicant”)**

**Mr John O'Hara, Flat 3 28 Fernieside, Moredun, Edinburgh, EH17 7BF (“the Respondent”)**

**Tribunal Members:**

**Gabrielle Miller (Legal Member) and John Blackwood (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to an order for payment from the Respondent for £9613.41 (NINE THOUSAND SIX HUNDRED AND THIRTEEN POUNDS AND FORTY ONE PENCE)**

**Background**

1. An application was received by the Housing and Property Chamber dated 5<sup>th</sup> July 2022. The application was submitted under Rule 111 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on the Respondent not maintaining rent payments amounting to £8387.39.

2. CMD was held on 2<sup>nd</sup> December 2022 at 10am by teleconferencing. The Applicant not present but was represented by Mr Ken Caldwell, Partner, Patten & Prentice Solicitors. The Respondent was present and represented himself. The CMD was continued to allow the Tribunal to see evidence of the affordability of the payment proposal and for payments to be made. A direction was issued.
3. The case was conjoined with case FTS/HPC/EV/22/2185

### The Case Management Discussion

4. A CMD was held on 3<sup>rd</sup> March 2023 at 10am by teleconferencing. The Applicant not present but was represented by Mr Ken Caldwell, Partner, Patten & Prentice Solicitors. The Respondent was present and represented himself. The Respondent told the Tribunal that he had lost his construction job on 24<sup>th</sup> December 2022. The subcontractor had left the site after an accident had happened there. He then returned to work on the trams from 16<sup>th</sup> – 27<sup>th</sup> January 2023. He was earning £500 per week. He paid £500 at the end of January 2023. On 13<sup>th</sup> February 2023 he started a new job that is to last until August 2023 at least. After which he is aware of other employment he will be able to undertake that will be secure for a number of years. He is being paid £880 per week in his current job. He believes this to be his net income. He paid £650 with an advance from this month's wages. He paid this on 27<sup>th</sup> February 2023. He is to pay another £50 today to ensure that he has paid the full rent for February. There was some discussion regarding the Respondent's income and expenditure. The Respondent had completed a form showing his income and expenditure. This was a form he had received from his sequestration that he had amended for the Tribunal. He did not get money advice to complete it. The Respondent has an accountant. However, the Respondent's accountant did not assist him in completing the form he submitted. The Tribunal had concerns about the affordability of the Respondent paying £1300 per month to his rent charge and arrears. The Tribunal noted that Child Benefit and Child Tax Credit had not been included in the income and expenditure form that had been submitted. This raised concerns again with the Tribunal that it may not be complete. A money adviser would be able to ensure that an income and expenditure form was fully completed. The Respondent is to contact a money adviser to assist him to complete an income and expenditure form. The Respondent is near the end of his sequestration period. The Tribunal noted that the Respondent may wish to discuss whether he wishes to apply for a Time To Pay Direction with the assistance of money advice. The Applicants may be able to assist him with this if they have in house money advisers for tenants. The Respondent told the Tribunal that he wants to stay in his house. He has full custody of his 14 year old son. He lives close to his school. Next year his son will be entering his exam year so stability is important for him. He is an eight minute walk from his work. He is trying to make payments. Mr Caldwell told the Tribunal that he found there to be a lot of inconsistencies with the Respondent. The Respondent had said at the last CMD that he was to pay £1300 but had paid £1000. He emailed the Housing and Property Chamber to say that he was to pay £650 on the 3<sup>rd</sup> March 2023 but has said that is he to pay £50 today not

£650. The Respondent interjected to note that he had made that payment early as he had an advance on his wages and the £50 payment was in addition to the £650 payment. Mr Caldwell said that while there was an income and expenditure form submitted that it had no vouching attached. It is not clear if his income details provided are net or gross given that he has an accountant to deal with his self employed income. He noted that a weekly income of £879 would mean that the Respondent has an income of over £45 000 annually. Mr Caldwell also noted that £200 per month for a combined cost for gas and electricity appeared to be low given the current climate with utility bills. Mr Caldwell also raised concerns over the Respondent's submission relating to his personal injuries claim. Mr Caldwell said that at the last CMD the Respondent had said that he was expecting to receive a minimum of £25 000 and was expecting to get £31 000. Mr Caldwell noted that the writ had just been lodged and the letter submitted from Digby Brown solicitors states that his unlikely to get as much as £25 000. The accident occurred in 2019. Mr Caldwell was of the view that this writ was done with the purpose of being a 'triennium buster' which is to protect the Respondent's ability to claim. Mr Caldwell noted that regardless the arrears were still over £8500. He reiterated his offer from the previous CMD that the Applicant would not enforce the order for eviction should the Respondent continue to pay towards his rent and arrears at the rate offered of £1300 per month. As the case is conjoined and the conjoined case was to address the rent arrears payments it was appropriate to continue this case to a hearing to be heard with the conjoined case. The case was adjourned to proceed to a hearing. The Tribunal issued a direction to the Respondent for information in the conjoined eviction case.

5. On 25<sup>th</sup> May 2023, the Applicant's solicitor, Mr Ken Caldwell, emailed the Housing and Property Chamber to advise that the Respondent had left the Property and the eviction application was now no longer required. He also intimated that the arrears had raised to £9613.41. The email included a rent statement for the period 19<sup>th</sup> August 2020 – 1<sup>st</sup> May 2023 which confirmed the arrears.
6. On 2<sup>nd</sup> June 2023 the Applicant emailed the Housing and Property Chamber stating that he had not had access to his emails until this point. He had thought that the hearing was not to go ahead. He had been out of employment but has now started a job. He was contacted by the Tribunal Clerk to advise that the hearing was going ahead and that he should attend if he was able to do so.

### The hearing

7. A hearing was held on 2<sup>nd</sup> June 2023 at 10am by teleconferencing. The Applicant was not present but was represented by Mr Ken Caldwell, Partner, Patten & Prentice Solicitors. The Respondent was present and represented himself.
8. Mr Caldwell told the Tribunal that there had been no payments made since March 2023. The Respondent left the Property on 19<sup>th</sup> May 2023. His rent

account was adjusted to that point. Mr Caldwell said that he was seeking an order for £9613.41 with interest at 4% per annum.

9. The Respondent said that he did not dispute that the amount stated was due. He admitted the debt. He wanted to find a way to pay the arrears.
10. Mr Caldwell said that he would oppose any motion to grant a Time To Pay Direction or continue for consideration of a Time To Pay Direction. There is a history of broken agreements. He noted that the Respondent has not sustained the offers of payment throughout the period of time that the case has been before the Tribunal. The Respondent had offered £1000 per month which was not maintained then at the last CMD in March he offered £1300 which was not paid. Accordingly, he opposed any motion regarding a Time To Pay Direction. He noted that he would accept an irrevocable mandate from Digby Brown solicitors who are dealing with the Respondent's personal injury case. The Respondent said that the case was being disputed not only in amount but also regarding liability. His solicitor is now preparing for the matter to go to court. Mr Caldwell noted that the Applicant would accept voluntary payments. The Tribunal noted that this was not a matter for the Tribunal but that parties could continue to remain in contact regarding payments after the date of the hearing. The Respondent is to contact Mr Caldwell in the coming days.
11. The Tribunal was satisfied that the outstanding amount for £9613.41 was due to the Applicant by the Respondent and that it was appropriate to grant an order accordingly. The Tribunal did not accept the motion to add interest at 4% per annum as this had not been raised until closing remarks.

#### Findings and reason for decision

12. A Private Rented Tenancy Agreement commenced 19<sup>th</sup> August 2020. The tenancy ended on 19<sup>th</sup> May 2023 when the Respondent moved into a property allocated to him from a housing association.
13. The Respondent persistently failed to pay his rent charge of £650 per month. The rent payments are due to be paid on 1<sup>st</sup> day of each month.
14. The Respondent admits that the full amount claimed, as amended, is due to the Applicant.
15. The arrears sought total £9613.14.

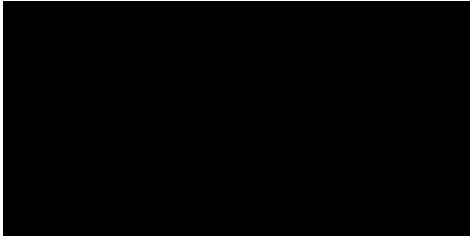
#### Decision

16. The Tribunal found that the Applicant was entitled to be granted an order for payment amounting to £9613.41.

#### **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.**



**Legal Member/Chair**

**2<sup>nd</sup> June 2023**

**Date**