



**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/22/3533**

**Re: Property at 125 Burns Road, Greenock, PA16 0PJ (“the Property”)**

**Parties:**

**Prime Developments Limited, 3 Newton Street, Greenock, PA16 8UH (“the Applicant”)**

**Mr James McClumpha, 125 Burns Road, Greenock, PA16 0PJ (“the Respondent”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member) and Ahsan Khan (Ordinary Member)**

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

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order in the sum of three thousand three hundred and seventy-three pounds and twenty-two pence ( £3373.22) be made in favour of the Applicant and against the Respondent with interest at the rate of 4 % per annum until payment is made.

The decision of the Tribunal was unanimous.

**Background**

1.This application for a payment order in terms of Rule 111 of the Tribunal rules of procedure was first lodged with the Tribunal on 28 September 2022 along with a related eviction order application under reference FTS/HPC/EV/22/3528 and accepted by the Tribunal on 26<sup>th</sup> October 2022.A case management discussion was fixed for 27<sup>th</sup> January at 2pm in relation to both applications.

## Case Management Discussion

2.The Applicant company was represented by Mr Caldwell solicitor of Patten and Prentice Solicitors.Sam Mohammed of the Applicant company was present at the case management discussion to observe the proceedings. There was no appearance by or on behalf of the Respondent. The Tribunal members noted that the Application and supporting papers had been served on the Respondent by Sheriff officers on 5<sup>th</sup> December 2022 by affixing these to the main door of the property as there was no letterbox. The Tribunal members were satisfied that fair notice of the case management discussion had been given to the Respondent and that it was appropriate to proceed in his absence.

3.The Tribunal had sight of the two applications, papers apart along with the applications, a letter to the Respondent dated 17<sup>th</sup> August 2022, a Notice to Leave and guidance notes, execution of service of these documents on the Respondent by Sheriff officer, a notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003, an email to Inverclyde Council in relation to the notice, a series of photographs, a rent statement dated 16<sup>th</sup> September 2022, an email dated 20<sup>th</sup> August 2021 from Inverclyde Council, a letter to the Respondent dated 26<sup>th</sup> September 2022 regarding rent arrears, an updated rent statement and a handwritten letter from a neighbour staying near to the let property. In addition to these documents the Tribunal had sight of an email the Respondent had sent to the Applicant's solicitor dated 21<sup>st</sup> December 2022 which he had copied to the Tribunal as part of an email thread started by the Applicant's solicitor who had sent an email to the Tribunal seeking to increase the sum requested by way of a payment order, which email was copied to the Respondent.

4.Mr Caldwell set out the details of the tenancy for the Tribunal members. The parties had entered into a private residential tenancy at the property with effect from 2<sup>nd</sup> March 2020.The rent for the tenancy is £ 498.33, payable monthly in advance and as at the date of service of the Notice to Leave in the eviction application in August 2022, the unpaid rent was £1379.90 and rent had been in arrears for three or more consecutive months, since April 2022. Mr Caldwell had written to the Respondent in September 2022 when the rent arrears had reached £1878.23 and this letter suggested that legal advice be sought and enclosed a guidance leaflet on homelessness during the pandemic.On 12<sup>th</sup> December 2022 Mr Caldwell emailed the Tribunal copying in the Respondent requesting to increase the sum being sought by way of a payment order in relation to the rent arrears to £3373.22, in terms of Rule 14A of the Tribunal Rules of procedure. The rent arrears as of January 2023 stood at £3871.55 and no rent had been paid by the Respondent since June 2022.The payment order application also sought interest on the unpaid sum at the rate of 4% per annum.

5.The Tribunal was satisfied that it was appropriate to allow the sum being requested by way of a payment order to be increased to £3373.22 in terms of Rule 14 A of the Tribunal rules of procedure as this request had been properly intimated to the Respondent more than 14 days before the case management discussion,

6.Mr Caldwell indicated that little was known of the Respondent's financial situation but at no time during the tenancy was it understood that the rent was being paid by housing benefit and there was no information to suggest that the rent arrears had

accrued due to some delay or failure in the payment of any benefit. The Respondent's employment status was unknown.

7.Mr Caldwell suggested that the property was boarded up and secure at the time of the case management discussion in January 2023 after an incident involving police attending there with a warrant in October 2022.His information was that the property now has little in the way of contents and is not being used or is being used only by associates of the Respondent for whatever purpose.

8.The Respondent did not appear at the case management discussion and was not represented and had not made any representations directly to the Tribunal. The Tribunal did have sight of an email he sent to the Applicant's solicitor on 21<sup>st</sup> December 2022 in response to Mr Caldwell's email requesting to increase the sum being sought by way of a payment order. In this email the Respondent suggested that he was still waiting for the door at the property to be replaced and stated that the house was not safe or secure. He said he would pay nothing as the living conditions were unacceptable. He suggested he had not abandoned the property and complained of the treatment he had received at the hands of the landlord's agent and said that he would surrender the property if an agreement could be reached and stated that he was seeking "comparison".

9.Mr Caldwell on behalf of the Applicant made a motion for expenses in relation to this application

10.The Tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

### **Findings in Fact**

11.The Applicant company and the Respondent entered into a private residential tenancy at the property with effect from 2<sup>nd</sup> March 2020.

12.The rent in terms of the tenancy agreement is £498.33 per month payable in advance.

13.In August 2022 when a Notice to Leave was served on the Respondent rent arrears had accrued in the sum of £1379.90 and the rent had been in arrears for a period of more than three consecutive months since April 2022.

14.In December 2022 rent arrears had accrued in the sum of £3373.22 and the arrears continue to accrue, no rent having been paid in terms of the tenancy agreement since June 2022.

15.The Applicant's solicitor wrote to the Respondent on the question of rent arrears in September 2022 and signposted him to guidance in the event of homelessness but received no reply.

16.The rent arrears accrued during the tenancy are not as the result of a delay or failure in the payment of housing benefit.

17.The Respondent in an e mail dated 21<sup>st</sup> December 2022 sent to the Applicant's solicitor said he would pay nothing for the property, complaining regarding the safety and security of the property and said he would surrender the property if an agreement could be made.

18.After a visit to the property by police in October 2022 the property was boarded up and remained secure after that time.

19.The sum of £3373.22 is lawfully due by the Respondent to the Applicant in terms of rent arrears accrued at the property in terms of the tenancy agreement between the parties.

### **Reasons for Decision**

20.The Tribunal was satisfied that it was reasonable to grant a payment order in relation to this application given the history of rent arrears and the stated position of the Respondent in his email of 21<sup>st</sup> December 2021 in respect of the arrears and his failure to engage with contact being made with him on the subject of outstanding rent. The tribunal awarded interest on the payment order at the rate of 4 % per annum to reflect the use value of the money lawfully due to the Applicant. The Tribunal refused a motion for expenses made on behalf the Applicant as expenses can only be awarded in terms of Rule 40 of the Tribunal rules of procedure where a party through unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense. In this application the Respondent did not appear or make representations to the Tribunal so there was no conduct by him to assess in terms of Rule 40.

### **Decision**

The Tribunal determined that a payment order in the sum of three thousand three hundred and seventy-three pounds and twenty-two pence ( £3373.22) be made in favour of the Applicant and against the Respondent with interest at the rate of 4 % per annum until payment is made.

### **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.**



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Legal Member/Chair

27.1.23  
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Date