



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 71 of the of the Private
Housing (Tenancies) (Scotland) Act 2016**

Chamber Ref: FTS/HPC/CV/21/2855

Re: Property at 22F Willowbank Road, Aberdeen, AB11 6YH (“the Property”)

Parties:

**Mrs Morag Shanks, Mr William Shanks, 3 Cliff View, Newtonhill, Stonehaven,
AB39 3GX (“the Applicant”)**

**Ms Eilidh Collyer, 3 Methven Drive, Dunfermline, Fife, KY12 0AH (“the
Respondent”)**

Tribunal Member:

Karen Kirk (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) granted a Payment Order against the Respondent for the sum of
£3703.30.**

Introduction

This Hearing was a Case Management Discussion fixed in terms of Rule 17 of the Procedure Rules and concerned an Application under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 (hereinafter referred to as “the 2016 Act”) for a Payment Order. The purpose of the Hearing being to explore how the parties dispute may be efficiently resolved. The purpose of the hearing was explained and it was understood a final decision on the Application could also be made. The Hearing took place by teleconference.

Attendance

The Applicants were present.

The Respondent was not present.

Background of the Care/ Preliminary Issues

This case previously called on 2 occasions. On both occasions the Respondent did not appear. The Respondent was served by Sheriff Officer on the 17th December 2021.

Immediately prior to the first hearing of the case in 21st January 2022 the Respondent emailed the Tribunal to advise that due to work commitments she could not attend but she wished to make payment. The Tribunal clarified if she was in a position to lodge a Time to Pay application and she confirmed she would be.

The Tribunal adjourned to a further CMD and issued a direction for the Respondent to complete a Time to Pay application and sent a new copy of a time to pay application to the Respondent.

Prior to the next hearing on 21st March 2022 the Respondent lodged a Time to Pay Application. Same was incomplete. She advised she would make full payment of the sum due but did not provide a timeframe for this. The Tribunal requested a timeframe but this was not received. The Respondent sought details of how to make payment.

At the Hearing on the 21st March 2022 the Applicants confirmed they wished to contact the Respondent directly to ask for payment with bank details but were not sure if this was appropriate. The Tribunal agreed to continue the hearing one last time to allow the Applicant to contact the Respondent for payment.

On 7th April 2022 the Applicants sent an email to the Respondent seeking payment and advising they wanted to avoid seeking a payment order if payment could be received. The copy email was sent to the Tribunal.

The Applicants confirmed no payment had been received or any contact from the Respondent.

Summary of Discussion

The Applicant's advised in terms of the PRT between parties that the Respondent did not meet her rental responsibility. They referred to the rent statement and the outstanding amount due by the Respondent of £3703.30. They had previously referred to applying part of the deposit to the arrears and attempting to contact the Respondent. They had recently attempted further contact with the Respondent prior to the hearing. On the basis of no contact from the Respondent they sought a Payment Order for £3703.30.

Accordingly the Tribunal considered all attempts had been exhausted to engage the Respondent fully. Other than the emails and the incomplete Time to Pay application there had been no attendance at any hearing by the Respondent and no written representations.

1. Findings in Fact

- 1. The Tribunal was satisfied that a decision could be made in the absence of the Respondent and at the CMD based on the information before the Tribunal. The Respondent had been given significant opportunity to do so and this was the 3rd hearing of the application. The Applicants had also made allowances and sought to try to resolve the matter out with the Tribunal. It was in the interests of the parties having regard to the Overriding objective to proceed.**
- 2. The Applicants sought an Order for Payment.**
- 3. The Tribunal was satisfied that the Applicants were the heritable proprietors of the Property as a copy title was lodged with the Application.**
- 4. There was a PRT in place between parties for the property and lodged with the application.**
- 5. Rent due by the Respondent to the Applicant in terms of the rent statement lodged was £3703.30.**
- 6. The Tribunal was satisfied on balance that it was appropriate to grant a Payment Order for £3703.30.**
- 7. The Respondent had lodged a Time to Pay application but same did not provide any timescales to seek to pay the sum or alternatively seek to make a periodic payment. The Tribunal determined the application being so incomplete was not competent.**
- 8. Accordingly, in terms of Section 11 of the 2016 Act the Tribunal granted a Payment Order against the Respondents.**

2. Reasons for Decision in Absence.

The Tribunal heard credible and reliable evidence from the Applicants together with substantial productions related to the property and rent arrears. The Tribunal were impressed regarding the credibility and attentiveness of the Applicants in seeking to resolve matters out with the Tribunal. They had lodged an email seeking to do that and had also been open to a Time to Pay application. However the Time to Pay application was no complete and the Respondent failed to engage with the Tribunal by attendance at a hearing, written representations or by providing a competent Time to Pay application. The Tribunal in all the circumstances granted the payment order sought.

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.

Karen Kirk

18th May 2022

Legal Member/Chair

Date