



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 70(1) of the Private Housing (Tenancies) (Scotland) Act 2014**

**Chamber Ref: FTS/HPC/CV/19/2756**

**Re: Property at 49 Montrose Avenue, Auldearn, IV12 5TT (“the Property”)**

**Parties:**

**The Highlands Small Community Housing Trust, 7 Ardross Terrace, Inverness, IV3 5NQ (“the Applicant”)**

**Miss Paisley McMahon and Mr Michael Stewart, whose present whereabouts are unknown (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment against the Respondent in the sum of Five thousand nine hundred pounds (£5,900) Sterling**

- 1 By application dated 11<sup>th</sup> October 2019 the Applicant sought an order for payment of rent arrears against the Respondents. In support of the application the Applicant provided a copy Tenancy Agreement and Rent Account.
- 2 By Notice of Acceptance of Application dated 9 October 2019 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 27<sup>th</sup> November 2019.
- 3 Attempts were made to serve the paperwork upon the Respondents by Sheriff Officers however they had since vacated their former tenancy at 49 Montrose Avenue, Auldearn leaving no forwarding address. The Case Management Discussion was therefore adjourned to the 7<sup>th</sup> January 2020 to enable service

by advertisement on the Tribunal's website. Service was effected between 25<sup>th</sup> November 2019 and 7 January 2020.

### **The Case Management Discussion**

- 4 The Case Management Discussion took place on 7<sup>th</sup> January 2020. Helen Mackie and Melanie Dalton appeared on behalf of the Applicant. The Respondents were not present nor represented.
- 5 The Legal Member explained the purpose of the Case Management Discussion ("CMD"). Having noted that the application paperwork had been served on the Respondents by advertisement on the Tribunal website, the Legal Member was satisfied that they had been given proper notification in terms of the First-tier Tribunal (Housing and Property Chamber) Procedural Rules 2017 as amended and determined to proceed with the CMD in their absence.
- 6 Ms Mackie advised that the sum sought had reduced to £5,900 following a payment of £1500 from the Respondents. The Applicant therefore sought an order for payment in that sum. There was also sums due for repairs costs following the Respondents' departure from the property. The Legal Member advised that they would have to go through a formal amendment procedure if they wished to include the repairs costs in the current application. Alternatively the Applicant could pursue this as a separate application. Ms Mackie advised that the Applicant would pursue this as a separate application as they wished the protection of the order in respect of the rent arrears.
- 7 Ms Mackie explained that the last contact with Respondents had been a telephone call with Mr Stewart on 10<sup>th</sup> December. She had urged him to attend the Case Management Discussion and he had said he would arrange for a representative to attend. Ms Mackie advised that she had sent numerous emails to the Respondents, the last being the day before the Case Management Discussion to remind them of the date, time and location.

### **Findings in Fact and Law**

- 8 The parties entered into a Short Assured Tenancy Agreement in respect of the property dated 16<sup>th</sup> December 2015.
- 9 In terms of Clause 2 of the Schedule appended to the said Tenancy Agreement the Respondents undertook to pay rent of £560 per month.
- 10 The tenancy between the parties terminated on 9<sup>th</sup> October 2019. As at the date of termination arrears in the sum of £7400 were outstanding.

- 11 As at the date of the Case Management Discussion arrears in the sum of £5900 were outstanding.
- 12 The Respondents are liable to pay the Applicant the sum of £5900 in terms of the Tenancy Agreement between the parties.
- 13 Despite repeated requests the Respondents have refused or delayed to make payment of the sums due.

### **Reasons for Decision**

- 14 The Tribunal was satisfied on the basis of the information before it that it was able to make a determination of the application at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties. The Tribunal noted that the Respondents had made various promises to repay the debt and were therefore aware of their liabilities under the terms of the Tenancy Agreement. They had chosen to vacate the property leaving no forwarding address, which appeared to be a deliberate attempt to evade payment. The Tribunal accepted Ms Mackie's submissions that the Respondents had also been repeatedly told of the date, time and location of the Case Management Discussion by the Applicant. The Tribunal was therefore satisfied that they were aware of the proceedings before it.
- 15 Having considered the terms of the tenancy agreement and rent statement produced by the Applicant, and based on its findings in fact, the Tribunal was satisfied that the Respondents were liable to pay the sum of £5900. The Tribunal accepted that the Respondents had a contractual obligation to make payment of rent at the rate of £560 per month to the Applicant and had failed to do so. The Respondents had not sought to dispute the terms of the application and there was no evidence before the Tribunal to contradict the position put forward on behalf of the Applicant.
- 16 The Tribunal therefore made an order for payment against the Respondents in the sum of £5900.

### **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.

Ruth O'Hare

Legal Member/Chair \_\_\_\_\_

7/1/20  
Date \_\_\_\_\_