



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/CV/18/1871

Re: Property at 8 Kerrystone Court, Dundee, DD4 8XJ ("the Property")

Parties:

Mr Umar Hayat, 18 Kingsway, Dundee, DD4 7DE ("the Applicant")

Mr John Gordon, 8 Kerrystone Court, Dundee, DD4 8XJ ("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 16th July 2018 and brought in terms of Rule 70 (Application for civil proceedings in relation to an assured tenancy under the 1988 Act) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant sought in his application payment of arrears in rental payments of £2,172.47 in relation to the Property from the Respondent, and provided with his application copies of the short assured tenancy agreement, form AT6, and rent arrears statement.

The short assured tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had 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 5th October 2018, and I was provided with the execution of service.

Case Management Discussion

A Case Management Discussion was held on 24th October 2018 at Caledonian House, Greenmarket, Dundee. The Applicant did not appear, but was represented by Mr Brown, solicitor. The Applicant's son also attended with Mr Brown. The Respondent did not appear, nor was he represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication

Mr Brown provided the Tribunal with a further rent arrears statement updated to today's date, which disclosed current arrears of rental of £2,763.83.

I was invited by Mr Brown with reference to the application and papers to grant an order for payment in the sum of £2,763.83, which failing the sum sought in the application of £2,172.47.

Mr Brown accepted that no intimation of the increased figure he sought had been given to the Respondent.

Statement of Reasons

Section 16 of the *Housing (Scotland) Act 2014* provides as follows:

"16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3) Part 1 of schedule 1 makes minor and consequential amendments."

Accordingly, the Tribunal now has jurisdiction in relation to claims by a landlord (such as the Applicant) for payment of unpaid rental against a tenant (such as the Respondent) under a short assured tenancy such as this.

The Tribunal considered the terms of the short assured tenancy agreement and the copy rent arrears statement provided, and was satisfied that this disclosed an

outstanding balance of rent arrears as at the date of the Application in the sum sought of £2,172.47.

The Tribunal was satisfied that the further rent arrears statement updated to today's date disclosed current arrears of rental of £2,763.83. However, that figure is not one which was intimated to the Respondent in the application with which he was served, and is significantly higher than the figure of £2,172.47 contained in the application.

In the absence of the Respondent at the Case Management Discussion today and where he has not received intimation of the higher figure sought, the Respondent has not been given the opportunity if he so chose to appear or make representations to the Tribunal as to whether he accepts that the increased figure is owed by him to the Applicant.

Though the Tribunal has sympathy for the Applicant's position in seeking an order for the increased sum now due, it felt that it would not be just to make an order for that increased amount where the Respondent has received no notice of it, having regard to the overriding objective of the Tribunal to deal with proceedings justly in terms of Rule 2 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

Further, Rules 13 and 14 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended deal with amendment to a party's written representations.

Rule 13(1) provides that subject to Rule 14 (amendment raising new issues), a party may amend their written representations any time up to 7 working days prior to the date fixed for a hearing, or within 7 working days prior to the date fixed for the hearing or during the hearing with consent of the Tribunal and on such conditions as the Tribunal thinks fit.

Rule 13(2) provides that such amendment must be in writing unless it is made during the hearing, in which case the terms of the amendment may be stated orally in the presence of any other party and noted by the Tribunal.

Rule 13(3) provides that on receipt of a written amendment, the Tribunal must intimate the amendment to the other party in writing unless the amendment was made orally during the hearing in accordance with Rule 13(2).

Read together, the Rule indicates that an oral amendment at the hearing may be allowed with the consent of the Tribunal, in which case its terms are to be stated in the presence of any other party. That is no doubt why Rule 13(3) provides that no intimation in writing is required to the other party of an amendment where it was made orally during the hearing, as the other party would have received notice of the amendment because it was stated orally in his or her presence.

All of that being so, the Tribunal considered that it should not consent to the oral amendment of the figure sought in the application to the higher figure now sought, in circumstances where the Respondent was not present or represented at the Case

Management Discussion and has received no intimation of the proposed amendment.

Accordingly, the Tribunal shall make an order for payment of the sum sought in the application, being the sum of £2,172.47.

Decision

In these circumstances, I will make an order for payment by the Respondent to the Applicant of the sum of £2,172.47.

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

Legal Member/Chair

24/10/18

Date