

Housing and Property Chamber
First-tier Tribunal for Scotland



**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/18/2475

Re: Property at Flat B, 33 Barnes Avenue, Dundee, DD4 9AE ("the Property")

Parties:

**Mrs Susan McKinlay, Northfield, Gamekeepers Road, Kinneswood, Kinross,
KY13 9JR ("the Applicant")**

**Ms Sarah McFie, Flat B, 33 Barnes Avenue, Dundee, DD4 9AE ("the
Respondent")**

Tribunal Member:

Petra Hennig-McFatridge (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that the Applicant was entitled to an order for payment
of £4,583.38 against the Respondent.**

Background

On 11 September 2018 the Applicant applied to the Tribunal for an order for payment of rent arrears of £2,583.38. The Applicant lodged with the application the Short Assured Tenancy Agreement dated and commencing 29 September 2016 with original date 30 May 2017 as well as Tenant Rent Statement to 5 September 2018, letters regarding direct payment from Dundee City Council dated 30.11.16, 12.12.17, Universal Credit application for direct payment 25.7.18, Bank Statements 19.1.16-31.8.18 and emails between the Applicant and the Respondent 22.6.18, 13.6.18, 10.6.18, 18.4.18, 27.3.18, 22.3.18, 8.12.17 and 13.6.17.

The application was intimated to the Respondent and a Case Management Discussion (CMD) fixed for 30 November 2018. The Respondent was served by Sheriff Officers with the notification on 12 November 2018 and both parties were

Petra Hennig-
McFatridge

advised that the Tribunal may do anything at a Case Management Discussion which it may do at a hearing, including making a decision on the application.

The Applicant attended with her husband Mr Scott McKinley as supporter. The Respondent attended with Mr Connor Durban as supporter.

A Case Management Discussion Note and Directions to both parties were issued and the parties advised that the necessary information had to be provided by 3 January 2019. Both parties were issued with letters detailing the date and time of the next CMD on 21 January 2019 at 10 am in Dundee Carers Centre. These documents are referred to for their terms and held to be incorporated herein.

On 7 January 2019 the Applicant lodged an email updating the rent arrears figure to £4,583.38 with an explanation that nothing further had been paid.

This was copied to the Respondent by letter dated 10 January 2019. Further letters reminding both parties of the date and time and venue of the CMD on 21 January 2019 were also issued to both parties reiterating the advice that at the CMD the Tribunal could do anything it could do at a hearing.

The Respondent contacted the Tribunal on 16 January 2019 advising she would not attend, was content for the CMD to go ahead without her and was not making a request for a postponement.

No further correspondence was received from the Respondent and the documents asked for in the direction of 30 November 2018 have not been lodged.

The Case Management Discussion:

The further CMD on 21 January 2019 was attended by the Applicant with her husband Scott Mckinlay as supporter. The Respondent did not attend.

The Applicant referred to the documents lodged with the application as stated above and further explained that the increase in rental payments outstanding had accrued at the rate of £500 per month as per the Tenancy Agreement and that no further payments had been received since the application was lodged. The arrears at the date of the CMD thus amount to £4,583.38. The documents lodged with the application are referred to for their terms and held to be incorporated herein.

Findings in Fact:

1. The Applicant and the Respondent entered into a Short Assured Tenancy commencing on 29 September 2016 with an initial duration to 30 March 2017, thereafter continuing month to month if not terminated (clause 1).
2. The rent is £500 per month payable on 29th day of the month (clause 2).
3. Payments were made as per the Tenant Rent Statement up to 5 September 2018.
4. No further payments were made in September, October, November and December 2018.

5. The amount of arrears due by the Respondent to the Applicant as of 21 January 2019 is £4,583.38

Reasons for Decision:

Both parties had known of the date time and venue of the CMD on 21 January 2019 since the CMD on 30 November 2018. Both had received Directions and only the Applicant had lodged the documents requested in the Directions to her. The Respondent had not lodged any further documents and had advised that she would not attend the CMD on 21 January 2019 and was content for this to proceed in her absence. The Tribunal is satisfied that the Respondent had had ample notice of the CMD, had been aware that an order could be granted at the CMD and had been aware that if she was disputing the arrears she would have to provide proof of the matters she considered relevant. She had not lodged any of the documents asked for in the Directions.

As stated in the Tenancy Agreement the rent for the property was £500 per calendar month. The Tribunal accepted the explanation of the Applicant given at the first CMD there was one month of arrears, which occurred at the start of the tenancy and thereafter there was a shortfall of rent each month, which was the difference between the monthly Housing Benefit payments paid directly to the Applicant and the sum due in terms of Clause 2 of the Tenancy Agreement. Only 4 payments of £50 each had been made by the Respondent's former partner, who had verbally undertaken to make up the shortfall when he moved out. After the Respondent had changed to Universal Credit only the two payments of £99.78 on 5.9.18 and £451.25 on 5.9.18 had been received. No further payments had been forthcoming and the arrears had increased by 4 months rent since the application was lodged.

The Respondent had previously stated that she had not been aware of the increase and of the lack of payment for July as she had understood from her Universal Credit statement online that the payments from July onwards had been deducted from her Universal Credit payments and she had assumed these had been in fact paid directly to the Applicant. She had not agreed the amount of arrears at the first CMD and had asked for time to investigate the matter and been directed to lodge correspondence showing the status of the Universal Credit issues she had raised to the Tribunal. No formal representations were made by the Respondent in regard to the CMD on 21 January 2019 and nothing had been lodged to suggest that the funds are not due.

The Tribunal considers that the Respondent was fully aware that an order could be made at this stage and that if she wished to dispute the arrears she would have been required to explain why the payment would not be due. No explanation or evidence was provided. The arrears were thus considered to be undisputed as at the date of the second CMD. The Applicant had provided sufficient evidence to show the development of the arrears and had updated the Tenant Rent Statement and the amount sought by the application by her explanation in the email of 7 January 2019, which had been forwarded to the Respondent. In light of the failure of the Respondent to lodge any of the requested documents and her telephone call to the Tribunal advising she would not attend and was not asking for further time, the Tribunal considered there was no valid defence to the action, it was no longer suggested that the sums were not due and the Tribunal was thus satisfied that as at

the date of the CMD the Respondent was in arrears of rent due to the Applicant in terms of the Tenancy Agreement of an amount of £4,583.38.

Decision:

The Tribunal grants an order for payment of the sum of £4,583.38.

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.

Petra Hennig-McFatridge

Legal Member/Chair

21 January 2019
Date