



**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/18/0465

Re: Property at 137 Balunie Drive, Dundee, DD4 8RU (“the Property”)

Parties:

Mr Andrew Miller, Mr Robert Miller, 127 Lathro Park, Kinross, KY13 8RU (“the Applicant”)

Ms Victoria Polwarth, 137 Balunie Drive, Dundee, DD4 8RU (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatrige (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £5,676.52 should be granted.

The Applicants had lodged an application for payment of rent arrears on 22 February 2018 and a related application for possession of the property at 137 Balunie Drive Dundee DD4 8RU on 12 February 2018 under reference FTS/HTC/EV/18/0355.

The Case Management Discussion (CMD) for the application took place on 25 June 2018 at the Dundee Carers Centre.

The Respondent had been advised of the date and time by letter served on her by Sheriff Officers on 28 May 2018.

The Applicant Robert Millar attended with his representative Carole Miller of Miller Letting Services Ltd, who confirmed she was also acting on behalf of the second named Applicant Andrew Miller. There was no appearance for the Respondents at the CMD. The Dundee North Law Centre had initially intimated that they were acting for the Respondents but advised the Tribunal on the day verbally that they would not attend due to a lack of instructions.

There had been no representations lodged on behalf of the Respondents at any time regarding the application itself and no issue had been taken with the facts as stated in the application

There had been a CMD on 2 May 2018 for the related case for payment of rent arrears FTS/HPC/CV/18/0465 and the Tribunal had intimated to the parties that these cases would be heard together and the CMD note for 2 May 2018 had been intimated to the Respondents.

The tribunal was satisfied that the Respondents had been given more than 14 days due notice of the CMD, the applications, the CMD note of 2 May 2018 and had been advised in terms of Rule 17 (4) that a decision may be made at the CMD.

The Case Management Discussion:

The representative for the Applicants first of all lodged an updated rent arrears calculation showing the sum outstanding as at the date of the hearing as £6,271.52. She explained that this had been sent to the Respondent's representative by email on 10 June 2018. She also confirmed no further payments had been made. She made representations on behalf of the Applicants that the tenancy had been terminated by the Notice to Quit served on 17 January 2018 and that the AT6 document served on 17 January 2018 had given the Respondents two weeks notice and set out the grounds for the application for possession of the property. She further advised that information from the Council had been received after the Council had made a payment of £268.48 and had then asked for this to be repaid by the Applicants, that the Respondent was not entitled to Housing Benefit. The Council had then agreed not to ask for the amount back from the Applicant but was to contact the Respondents regarding this. The Applicants state they have made every effort to assist the Respondent in resolving matters but that no replies to contact from them had been received other than one letter from the Dundee North Law Centre. The Respondent had not made any attempt to reduce the arrears and had not made any payments herself since October 2017. A Copy of the new arrears statement was produced to the tribunal. The Applicants asked for an order for payment of the arrears to date.

Findings in fact:

- 1. The Applicants and the Respondent had entered into a Short Assured Tenancy Agreement commencing on 1 March 2014 for the initial period to 1 September 2014 with a month to month continuation until terminated by either party giving no less than 2 months notice to the other party. (Clause 1.1).**
- 2. An AT5 document had been served on the Respondent on 27 February 2014.**
- 3. In terms of Clause 2 of the Agreement the rent payable in advance by the 1st day of each month is £595.**
- 4. The Respondent paid rent regularly until June 2017 and paid no rent from October 2017 to June 2018.**
- 5. One payment of £268.48 was received in Housing Benefit (representing two weeks rent) in December 2017 but the Council thereafter advised the**

Applicants that Housing Benefit is not due and that they would try to recover the sum from the Respondent.

- 6. The Application for payment of rent arrears asked for a payment order for the amount due when the Respondent remove themselves from the property. At the CMD on 2 May 2018 the Applicant had updated the sum of arrears by confirming that no payments had been received of the monthly sum of £595 up to and including the May rental payment due. This was noted in the CMD note and the CMD note was sent to the Respondents. The Respondents had thus fair notice of the arrears including the payments due by 2 May 2018 for the sum of £5,676.52.**
- 7. The Respondent has provided no explanation or justification for non payment of rent due since October 2017.**
- 8. No representations were made to the tribunal regarding the non payment of rent.**
- 9. The Applicants had served a Notice to Quit dated 16 January 2018 for 1 April 2018 to the Respondent.**
- 10. Sheriff Officers served this Notice to Quit and a S 33 Notice and the AT6 document on the Respondent on 17 January 2018.**
- 11. As at the date of service of the AT6 Notice on 17 January 2018 the arrears were £3,565.00, as at the date of the application the arrears were £3,891.52 and as at the date of the CMD the rent arrears were £6,271.52.**
- 12. The arrears as of January 2018 were detailed in the AT6 document as £3,296.52.**
- 13. The arrears due at the time of the CMD on 2 May 2018 were £5,676.52.**

Reasons for Decision:

- 1. The tribunal notes that there were no representations made by the Respondents or their legal representative to the tribunal which would indicate any reason why the rental payments were not made or would not be due.**
- 2. There were rent arrears on the date when proceedings were begun of £3,891.52**
- 3. There were no payments of rent by the Respondent for months from October 2017 to June 2018 without any explanation.**
- 4. The Respondent was advised of the amount of arrears in the CMD note of 2 May 2018 as this detailed that in addition to the arrears set out in the application, there had been no payments received by the Applicants for the months of March, April and May 2018. The tenancy agreements sets out that thus a further £595 per month would accrue.**
- 5. The tribunal was satisfied on the evidence submitted that as of 2 May 2018 the sum of £5,676.52 was due to be paid by the Respondent to the Applicant in terms of the Short Assured Tenancy Agreement.**
- 6. The tribunal considered that the application for payment could be granted for the sum up to and including May 2018, this being the amount**

of £5,676.52 as this was the amount the Respondent had been given due notice of. There had been no correspondence to the tribunal in advance of the CMD on 25 June 2018 regarding the June payment and thus the tribunal was not satisfied the Respondent had been given due notice by the tribunal that this sum would be included in any order.

Decision:

The Tribunal grants an order for payment by the Respondent to the Applicants for the sum of £5,676.52

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

P Hennig-McFatrige

Legal Member/Chair

Date

25 June 2018