



**Decision 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/23/0051**

**Re: Property at 21V Marine Parade Walk, Dundee, DD1 3AU (“the Property”)**

**Parties:**

**Sean Lewis , India Buildings, 86 Bell Street, Dundee, DD1 1HN (“the Applicant”)**

**Mr John McLean, Mrs Kimberley Bruce, 21V Marine Parade Walk, Dundee, DD1 3AU (“the Respondents”)**

**Tribunal Members:**

**Fiona Watson (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondents for payment of the undernoted sum to the Applicant:**

**Sum of NINE THOUSAND SEVEN HUNDRED AND THIRTY POUNDS (£9,730) STERLING**

- Background
1. An application dated 6 January 2023 was submitted to the Tribunal under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking a payment order against the Respondents in relation to rent arrears accrued under a short assured tenancy agreement.

- The Case Management Discussion
2. A Case Management Discussion (“CMD”) took place on 7 August 2023 by conference call. The Applicant was represented by his letting agent, Ms Lewis of Belvoir. The Respondents were both personally present.
  3. The Applicant’s representative moved for the order for payment to be granted as sought. The parties had entered into a Short Assured Tenancy Agreement. The Respondents had failed to make payment of rent and had fallen into arrears amounting to £10,400 as at the date of the application. The last payment to account was made by way of a grant from the local authority in February 2022. Nothing had been paid since then. The last payment made by the Respondents was in early 2021.
  4. Mr McLean, on behalf of both Respondents, submitted that the level of arrears was accepted, but that he wished to have clarification on whether the tenancy deposit had been taken into account when coming to the figure of £10,400. Mr McLean also sought a continuation of the CMD to obtain legal advice in relation to other matters he said had “come to light” surrounding their eviction. Mr McLean was unable to explain how seeking said advice would alter the current position in relation to the application currently before the tribunal, where the level of arrears was admitted. The tribunal also noted that an extension had already been given to the lodging of a response by the respondents, following an email being received from Ms Bruce advising that they were seeking advice on their position.
  5. The CMD was adjourned for a short period for the Applicant’s representative to email the Tribunal with evidence of the deposit having been repaid to the agents. An updated rent statement was emailed to the Tribunal administration which showed that a tenancy deposit in the sum of £670 had been received. This accordingly reduced the sum sought to £9,730. Upon the CMD reconvening, Mr McLean accepted this deposit figure as being correct.
  6. The Respondents had lodged a Time to Pay Application, offering repayment of the arrears by way of instalments at the rate of £100 per month. This was not accepted by the Applicant’s representative. It was submitted by the Applicant’s representative that this offer of repayment was too low given the level of arrears, and further that the Applicant had no faith that any of these payments would be made, as it was said that the Respondents had a history of non-payment. Ms Bruce confirmed that taking advice on the other matters previously referred to by the Respondents would not alter the offer put forward by them for repayment of the arrears and that the sum put forward was the sum which they could afford.
- Findings in Fact
7. The Tribunal made the following findings in fact:
    - (a) The parties entered into a Short Assured Tenancy Agreement (“the Agreement”) which commenced 1 July 2014;

- (b) In terms of Clause 2 of the Agreement, the Respondents were initially obliged to pay a monthly rent of £670 to the Applicant, which was thereafter increased to £700 per month;
- (c) The Respondents had failed to make payment of rent as fell lawfully due, and had accrued arrears amounting to £10,400 at the date of the application;
- (d) The Applicant had received repayment of the Respondents' tenancy deposit in the sum of £670.

- Reasons for Decision

8. The Tribunal was satisfied that the Applicant was entitled to the sum of £9,730. The Respondents were obliged to make payment of rent in the sum of £700 per month under Clause 2 of the Agreement and had failed to do so. They had accrued arrears of rent which fell lawfully due to be repaid to the Applicant, and which arrears the Respondents had accepted fell due.
9. The Tribunal refused the Respondents' Time to Pay application. The Tribunal considered that the offer of £100 per month was not a reasonable one, taking into account the level of rent arrears due and the length of time this would take to repay. At this rate, it would take the Respondents in excess of 8 years to repay the sums due to the Applicant.

- Decision

10. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondents for payment of the undernoted sum to the Applicant:

Sum OF NINE THOUSAND SEVEN HUNDRED AND THIRTY POUNDS  
(£9,730) STERLING

## **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.**

**Fiona Watson**

**Legal Member/Chair:**

**Date: 7 August 2023**