



**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 and Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure as set out in the schedule of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Chamber Rules”)**

**Chamber Ref: FTS/HPC/CV/20/1020**

**Re: Property at 3/3 Glendevon Park, Edinburgh, EH12 5XD (“the Property”)**

**Parties:**

**Mr Alan Johnstone, 26 Ashgrove Terrace, Lockerbie, DG11 2BG  
 (“the Applicant”)**

**Ms Tracy Mason, Unknown, Unknown  
 (“the Respondent”)**

**Tribunal Members:**

**Anne Mathie (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 in respect of rent arrears in the sum of TWO THOUSAND FIVE HUNDRED AND SEVENTY SIX POUNDS AND THIRTY FOUR PENCE [£2576.34] STERLING be made.**

- **Background**

An application was lodged by the Applicant’s representative which was undated, purported to be under Rule 111 of the Chamber Rules and sought a payment order in the sum of £937.50. Along with the application were lodged a copy of the tenancy agreement and a copy of a rent statement.

A Notice of Direction was issued by the Tribunal dated 5 May 2020 directing that a properly dated and signed replacement page to the application be lodged. The

Applicant's representative was also directed to lodge a clear rent statement showing the amount of arrears due as the rent statement lodged with the application did not show a shortfall.

The Applicant's representative emailed the Tribunal on 20 July 2020 asking what could be done in respect of an increased rent arrears figure. The Tribunal advised by return email that any updated statement of rent could be lodged and would then be crossed over to the other party.

A Case Management Discussion in respect of the application (and a related eviction application) was scheduled for 12 August 2020. The Respondent provided written representations in respect of both the eviction and civil application. There was a dispute in respect of the amount of deposit paid and the amount of arrears was not agreed.

An amended application form was lodged by the Applicant's representative dated 31 July 2020 under Rule 111 seeking a payment order for an increased sum of rent arrears of £1347.41, An amended rent statement was lodged showing rent and interest due in the sum of £1183.78.

An email was sent to the Tribunal by the Applicant's representative on 11 August 2020 seeking an increased payment order in the sum of £1885.17.

At the Case Management Discussion on 12 August the related eviction application was granted.

The Tribunal noted that the civil action was incorrectly said to be in terms of Rule 111 when it should in fact be Rule 70. It was also noted that the Applicant's representative had not followed Rule 14A in terms of amending the application to the updated rent figure.

There were noted to be other problems in respect of the sum sought for rent arrears. The tenancy had been managed by Craigflower Lettings. At the time of the application being lodged the rent statement held by Craigflower Lettings and lodged with a latest date of 26 March 2020 showed that throughout the duration of the tenancy the Respondent had paid the total of £46,562.50 and there was a balance of zero on the Respondent's account.

The directions of 5 May 2020 required clarification of the rent statement and sums sought from the Respondent. A rent statement in a different format was produced by email on 31 July 2020. This did not cover the entirety of the tenancy. It was in a different format and it was unclear who had prepared the schedule and what information and documents were used to do so. Within the new schedule provision was made for interest being applied on late payments of rent.

The Craigflower Lettings rent statement showed a balance of zero as at 26 March 2020. However the fresh schedule of rent payments showed a debit balance of £2335.50 apparently due to the Applicant as at that date. No corresponding explanation was provided. In terms of the rent statement produced on 31 July 2020 the debit balance suggested as at 31 July 2020 was £1020.15 (in the absence of any application of interest).

The level of alleged rent arrears was made more ambiguous by further submissions lodged on behalf of the Applicant which were sent the day before the Case Management Discussion indicating that the rent statement sent on 31 July 2020 was incorrect. At that point it was said that before the application of interest that £1645.15 was in fact owed (relating to an additional outstanding months' rent applied, said to have been absent before due to a clerical error in the narrative in 2015).

Within the additional submissions of the Applicant's agent provided on 31 July 2020 certification of housing benefit payments in the sum of £1434.04 (for the period 6 April 2020 to 30 June 2020) and the sum of £506.31 (for the period 1 July 2020 to 31 July 2020) were vouched.

Against this background the Tribunal was clear that no order for payment against the Respondent would be made at that stage. The parties were encouraged to have direct discussions in order to hopefully resolve the rent arrears dispute. The Applicant's agent was required to produce all and any further documentation to establish the rent arrears and make a formal Rule 14A amendment, intimating this to the Respondent within 28 days. A further Case Management Discussion was to be fixed no earlier than 6 weeks' time.

The Applicant's agent emailed the Tribunal on 2 September 2020 asking for an extension to the 28 day deadline set at the Case Management Discussion. They advised that they were continuing discussions with the Respondent and required more time. The Respondent was in agreement with this. The Tribunal granted an extension of time and the application was assigned to a further Case Management Discussion on 2 October 2020. Parties were notified of the Case Management Discussion by letter dated 3 September 2020. The parties were advised in the notification letter 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 which may involve making or refusing a payment order. If you do not take part in the case management discussion, this will not stop a decision or order being made by the tribunal if the tribunal considers that it has sufficient information before it to do so and that the procedure has been fair."*

By email dated 17 September the Applicant's agents lodged an amended application form in terms of Chamber Rule 70 seeking a payment order in the sum of £2576.34.

They also sought an order that the £300 deposit could be set off against the rent arrears. Along with the amended application were lodged a rent receipts table from Craigflower Lettings, Initial payment demand/receipt to Respondent, Payment advice from Edinburgh City Council and a summary table of rents due and received prepared by the applicant's agents from those documents.

- **The Case Management Discussion**

The further Case Management Discussion took place on 2 October 2020. Alistair Stevenson, solicitor, of McJarrow and Stevenson attended for the Applicant. There was no attendance by the Respondent. Mr Stevenson confirmed that he had made many attempts to discuss the rent arrears figure with the Respondent by calling, emailing and text messages. He did at one point have quite a lengthy discussion with the Respondent. She had removed from the Property on 11 September in accordance with the eviction notice and her present address was unknown. She was adamant that she had paid more than £300 deposit. The extra payment of £312.50 had eventually been found by Craigflower Lettings and attributed to the Respondent's rent account on 26 March 2020 some 7 years after it had been paid. There was no explanation provided by Craigflower Lettings as to where that money had been for 7 years.

The Tribunal felt it unfortunate that the Respondent was not in attendance to provide her view on the figures in the circumstances. There was a short adjournment during which time Mr Stevenson sent the Tribunal the email that had been sent to the Respondent intimating the amount now sought. Discussion also took place of the deposit of £300 which was lodged in a recognised deposit scheme. The Tribunal did not feel it should order that this be paid to the Applicant but would note in the decision that a payment order for rent arrears was made and that the Applicant may seek to use the deposit towards this.

- **Findings in Fact**

The Applicant and Respondent had entered a tenancy agreement under the terms of which the Respondent was required to pay rent in the sum of £625 per month.

The Respondent had fallen into arrears with her rent payments.

- **Reasons for Decision**

The Tribunal heard oral submissions from the Applicant's agent and had sight of the written productions lodged. Apart from the initial written representations from the Respondent and the Applicant's agent's representations on the discussions that had taken place between him and the Respondent, there was nothing to dispute the evidence before the Tribunal.


- **Decision**

To grant the payment order as sought.

### **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.**

Anne Mathie

  
**Legal Member/Chair**

**2 October 2020**

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**Date**