

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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/18/0966**

**Re: Property at 211 North Anderson Drive, Aberdeen, AB16 5NH ("the Property")**

**Parties:**

**Mr Raymond Charles, Mrs Lynn Charles, 3 Northcote Park, Aberdeen, AB15 7SX ("the Applicant")**

**Mr Morton Magadzire, Mrs Chola Mpashi, 3 Manor Court, Aberdeen, AB16 7UG; 3 Manor Court, Aberdeen, AB16 7UG ("the Respondent")**

**Tribunal Members:**

**Ewan Miller (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that a payment order in the sum of £2966.47 would be made against the Respondent**

**Background**

The Applicant had lodged an application under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (the Rules)

The Applicant sought payment of the sum of £4,428.37 from the Respondent in respect of rent arrears in relation to a lease between the parties of the Property.

The parties had been notified that a Case Management Discussion would be held on 11 September 2018 in terms of Rule 17 of the Rules to either determine the case or to refer to a full hearing of the Tribunal.

In advance of the Case Management Discussion, Mr Magadzire of the Respondent had requested the matter be adjourned or postponed to an undefined date due to the pregnancy of his wife, Ms Chola Mpashi.

The Tribunal elected to continue to have a Case Management Discussion but to hear Mr Magadzire's request at that stage.

### **Case Management Discussion**

The Case Management Discussion was held on 11 September 2018 at 2pm in the Credo Centre, John Street, Aberdeen.

Mr Guain of Aberdeen Considine, Solicitors was present on behalf of the Applicants. Mr Magadzire was present on behalf of the Respondent.

Mr Magadzire produced evidence that his wife was 8 months pregnant but was unable to attend as she was in hospital. His position was that the sum sought by the Applicant was incorrect. He advised that his wife had dealt with payments and she was sure that not all sums from Housing Benefit had been properly credited. He asked for matters to be postponed a couple of months so that his wife could attend as she dealt with financial matters.

Mr Guain's initial submission was that the sums were due as sought. The Respondents had had the opportunity to come forward and provide written submissions if they had thought the sums sought were wrong but had failed to do so. Any further delay would be prejudicial to the Applicant.

The Tribunal was of the view that notwithstanding the lack of response from the Respondent to date, there did appear to be a dispute as to the sums due and so it would be appropriate for the matter to be referred to a full hearing.

However, during an adjournment of the Tribunal, the parties took the opportunity to discuss matters between themselves. Mr Magadzire was able to contact his wife who gave details of payments that she was of the view that had been made but not credited, Mr Guain was able to cross check this with the letting agents. The letting agents were able to identify these sums and that they had not been credited against the Respondent's account correctly. The parties now agreed that there was an outstanding sum of £2966.47

### **Findings in Fact**

The Tribunal found the following facts to be established:-

- The Applicants had let the Property to the Respondents on 3 April 2016
- The Respondents were liable to pay £850 per calendar month during the term of the lease between the parties
- There were arrears of rental due to the Respondents of £2966.47

### **Reasons for Decision**

The Tribunal based its decision on the evidence before it at the Case Management Discussion. The Parties, after discussion between them, agreed that an amended sum of £2966.47 was due. Mr Magadzire had spoken to his wife and she was content that this reflected the correct amount due. Both parties confirmed that they were happy for a payment order for the corrected sum to be made and that a decision issued to that effect. There was no benefit in the matter being referred to a full hearing of the Tribunal as there was an agreed position.

The Tribunal was content to proceed on that basis

### **Decision**

The Tribunal determined that the Respondent was due the Applicant the sum of £2966.47 in respect of arrears of rental under the lease of the Property.

### **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.**

Ewan Miller

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**Legal Member/Chair**

11/9/18  
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**Date**