



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 (1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/23/1802**

**Re: Property at 21 Alva Crescent, Fraserburgh, AB43 9RW (“the Property”)**

**Parties:**

**Mr David Charles Scothern, 14 Houghton Close, Asfordby Hill, Melton Mowbray, Leicestershire, LE14 3QL (“the Applicant”)**

**Mr Robert Cumming, 21 Alva Crescent, Fraserburgh, AB43 9RW (“the Respondent”)**

**Tribunal Members:**

**Andrew McLaughlin (Legal Member) and Elizabeth Williams (Ordinary Member)**

**Decision**

**[1] The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted the Application and made a Payment Order in favour of the Applicant against the Respondent in the sum of £13,000.00.**

## **Background**

[2] The Applicant seeks a Payment Order for rent arrears accrued by the Respondent under a tenancy between the parties. The Applicant had competently amended the sum now sought to £13,000.00. There had been a Case Management Discussion (“CMD”) on 18 September 2023 in which the Respondent had accepted that the rent arrears figures were calculated accurately but sought to argue that that there had been historic repairing issues with the locks and the heating. He acknowledged that these had been long since resolved. The Respondent accepted that he had continued not to pay any rent at all even long after these issues were resolved. At the CMD, The Tribunal had decided *“that there might be a legitimate basis for contending that a small amount of rent was not lawfully due but this would need to be set out fully by the Respondent in writing in such a manner that might explain and justify his position in both fact and law”*.

[3] The Tribunal had also then made a Direction obliging the Respondent to provide:

*“Written representations setting out in full and in numbered paragraphs the arguments in fact and law as to why not all the rent claimed is lawfully due.”*

[4] These had to be submitted by 9 October 2023. This Direction was not complied with although the Respondent had emailed the Tribunal regarding submitting his dates to avoid for the next Hearing.

## **The Hearing**

[5] The Application called for a Hearing by conference call at 10 am on 15 December 2023. The Applicant was personally present along with his representative, Mr Forbes. The Respondent was personally present.

[6] Neither party had any preliminary matter to raise. The Tribunal raised the Respondent's non-compliance with the Direction. The Respondent appeared to say he had "*misread*" the Direction. His explanation for this did not appear credible. The Respondent said he had emailed The Tribunal with some photos and information this morning. The Tribunal asked the Respondent how much rent he thought was lawfully due to the Applicant- he replied saying he "*didn't know*" as he hadn't "*worked it out*". The Tribunal adjourned to consider how to proceed.

[7] The Tribunal looked at the information supplied by the Respondent which had been emailed in on the morning of the Hearing. It amounted to a few unremarkable photos of the Property that showed, at best, some very minor issues of cleanliness and an issue with a plug socket and a couple of paragraphs of text written in an email which addressed some repairing issues very superficially and without nearly the amount of detail expected by the Direction.

[8] The Tribunal considered whether it would be in the interests of justice to allow this information to be received notwithstanding the clear non-compliance with the Direction. The Tribunal considered that it would not be, as there was no legitimate reason as to why it was produced so late and what had been produced didn't satisfy the terms of the Direction in any event. What was produced fell way short of detailing a stateable defence to the Application.

[9] The Tribunal reconvened and explained that it would accordingly not allow the documentation to be received. The Tribunal decided to dismiss the defence in terms of Rule 27 (2) (b) on the basis that the Respondent had not co-operated with the Tribunal in a manner that meant that the Tribunal could not deal with the defence justly and fairly.

[10] The Tribunal thereafter made the following findings in fact.

## Findings in Fact

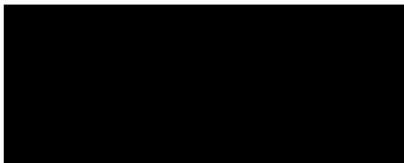
- I. *The Applicant let the Property to the Respondent by virtue of a Private residential Tenancy Agreement;*
- II. *The Respondent paid the first month's rent and beyond that, has not paid any rent whatsoever;*
- III. *There is no credible basis before the Tribunal to suggest that the sum of £13,000.00 claimed in rent arrears is anything other than lawfully due to the Applicant.*

## Reasons for Decision

[11] Having made the above findings in fact, the Tribunal granted the Application and made a Payment Order in the sum of £13,000.00.

## 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.



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Legal Member/Chair

15 December 2023

Date