



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 70(1) of the Private Housing Tenancies (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/20/0147**

**Re: Property at 26 Albyn Grove, Aberdeen, AB106SQ (“the Property”)**

**Parties:**

**Mr Duncan Bickerton, Kleinstrasse 30, Munich, 81379, Germany (“the Applicant”)**

**Mr Wray Thomson, Unknown, Unknown (“the Respondent”)**

**Tribunal Members:**

**Ruth O’Hare (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment against the Respondent in the sum of One thousand eight hundred and sixty six pounds and seventy six pence (£1866.76) Sterling**

- 1 By application dated 21 January 2020 the Applicant sought an order for payment of rent arrears against the Respondent. In support of the application the Applicant provided a Rent Statement and copy Tenancy Agreement between the parties.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 30 March 2020.
- 3 The Applicant submitted a Request for Advertisement on the basis that the Respondent’s whereabouts were unknown which was accompanied by a trace report from Sheriff Officers dated 21 January 2020, however subsequently

advised that a forwarding address had been obtained for the Respondent at 30 Urquhart Court, Aberdeen, AB24 5JP. The Tribunal attempted service upon the Respondent at that address however it transpired that the Respondent was not residing there. Accordingly having been satisfied that the Applicant had made reasonable efforts to locate an address for the Respondent the Tribunal agreed to grant permission for service by advertisement on the Tribunal website in terms of Rule 6A of the First-tier Tribunal (Housing and Property Chamber) Procedural Rules. Service was duly effected.

- 4 Following the imposition of restrictions arising from the Covid-19 pandemic the Case Management Discussion was postponed to 24 July 2020. A direction was issued to the parties by the Chamber President confirming that the Case Management Discussion would take place by teleconference. Notification of the date and time, together with instructions on how to join the teleconference was intimated to the Applicant and the Applicant's representative by email. Due to there being no forwarding address for the Respondent and no email address, notification was given to him by way of service by advertisement on the Tribunal website.

### **The Case Management Discussion**

- 5 The Case Management Discussion took place on 24 July 2020 by teleconference. Both the Applicant and the Applicant's Representative, Lauren Cowling, was in attendance. The Respondent did not attend.
- 6 Having noted that the efforts made by the Applicant to trace the Respondent, the failed and the evidence of service by advertisement of the original application paperwork and of the adjourned Case Management Discussion on the Tribunal website, the Legal Member determined she could proceed with the Case Management Discussion in the Respondent's absence.
- 7 The Applicant's Representative confirmed that the Applicant had sought an order for payment for £2,491.76 however the tenancy deposit had subsequently been returned through the deposit scheme and this had been applied to the outstanding sum, leaving a balance of £1866.76. An order in that sum was sought. She advised that the tenancy had commenced in February 2019 and the Respondent had paid six months rent upfront. However at the end of the initial six month period, he had to be prompted to make further payments which he did in the amount of one months rent in September 2019. He had paid nothing since and his tenancy had then terminated in January 2020. The Applicant's Representative confirmed that the Applicant was seeking the late payment fees which he was entitled to under the terms of the Tenancy Agreement.

## **Findings in Fact and Law**

- 8 The parties entered into a Private Residential Tenancy Agreement in respect of the property which commenced on 25 February 2019.
- 9 In terms of Clause 8 of the said Tenancy Agreement the Respondent undertook to make payment of rent to the Applicant at the rate of £625 per month.
- 10 The tenancy terminated on 9 January 2020. As at the date of termination rent arrears in the sum of £2203.76 were outstanding.
- 11 In terms of Clause 9 of the said Tenancy Agreement the Respondent undertook to make payment of late payment fees to the Applicant. As at the date of termination of the tenancy, fees in the sum of £288 were outstanding.
- 12 The Respondent is liable for payment of the said sum of £2491.76 in terms of the Tenancy Agreement between the parties.
- 13 The deposit of £625 was repaid to the Applicant by the tenancy deposit scheme within which it had been lodged. The Respondent did not challenge the Applicant's claim.
- 14 The sum of £1866.76 is due to be paid by the Respondent to the Applicant. Despite repeated requests the Respondent has refused or delayed to make payment of the sums due.

## **Reasons for Decision**

- 15 The Tribunal was satisfied that the Respondent had received proper notification of the application and the Case Management Discussion. The Tribunal therefore considered it was able to continue with the Case Management Discussion in the absence of the Respondent. The Tribunal was further satisfied that it was able to make a determination of the application at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties.
- 16 Having considered the terms of the tenancy agreement and rent statement produced by the Applicant, and based on its findings in fact, the Tribunal was satisfied that the Respondent was liable to pay the sum of £1866.76. The Respondent had not sought to dispute the terms of the application and there was no evidence before the Tribunal to contradict the position put forward on behalf of the Applicant. The Tribunal therefore made an order for payment against the Respondent.

## 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.

24 July 2020

Ruth O'Hare

Legal Member/Chair

Date