



**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/19/0458 and FTS/HPC/CV/19/0459

**Re: Properties at Wagglehead Cottage, Brise, Aboyne, AB34 5BT and 27A High
Street, Banchory, AB31 5TD (“the Property”)**

Parties:

**Craigmyle Estates Limited, Craigharr House, Keith Hall, Inverurie, AB51 0LN
 (“the Applicant”)**

**Mr Russell Ferguson, 8 Clyde Court, Glenrothes, Fife, KY6 2BN (“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 orders for payment against the Respondent in
the sum of £2010 in respect of FTS/HPC/CV/19/0458 and £2630 in respect of
FTS/HPC/CV/19/0459**

Background

- 1 By applications dated 8 February 2019 the Applicant sought orders for payment of outstanding rent arrears from the Respondent. In respect of FTS/HPC/CV/19/0458 the sum sought was £2010. In respect of FTS/HPC/CV/19/0459 the sum sought was £2630.
- 2 By Notice of Acceptance of Application dated 22nd February 2019, the Legal Member with delegated powers of the Chamber President intimated that there were no grounds for rejection of the application. Further, it was agreed that the applications should be heard together given that they related to the same parties and the same circumstances, albeit different properties. A Case

Management Discussion in both applications was therefore assigned for 24th April 2019.

- 3 A copy of the application together with supporting documentation and notification of the Case Management Discussion was served on the Respondent by Sheriff Officers on 2nd April 2019.
- 4 On 18th April 2019 the Respondent contacted the Tribunal administration by email. In summary he cited a history of health difficulties which had impeded his employment and had left him without an income. He had understood that the lease for 27a High Street was conditional on a grant of local housing allowance which had not come through. However he concluded by stating that he accepted the sums sought under both applications were due and he would not be attending the Case Management Discussion.

The Case Management Discussion

- 5 The Case Management Discussion took place at the Credo Centre, Aberdeen on 24th April 2019. The Applicant was represented by Mr Kal Masia from Burnett and Reid Solicitors.
- 6 Mr Masia confirmed that he had received a copy of the representation from the Respondent. He noted the Respondent had made reference to a trust deed, however Mr Masia clarified that this has been put in place before the debt sought by the Applicant had accrued. On that basis the debt did not form part of the trust deed and could be claimed by the Applicant. Mr Masia further explained that the tenancy at 27A High Street had been offered to the Respondent as he advised the applicant he had work coming in and would be entitled to a backdate of housing benefit which would reduce the arrears and cover ongoing rent. Neither had transpired therefore the parties mutually agreed to terminate the tenancy as at 31st May 2018.

Findings in Fact and Law

- 7 The Applicant entered into a Tenancy Agreement with the Respondent in respect of which commenced on 1st May 2017.
- 8 In terms of Clause 2 of the Tenancy Agreement the Respondent undertook to pay rent at the rate of £660 per month.
- 9 The tenancy between the parties was terminated as at 31st January 2018 following notice from the Respondent. As at the date of termination, arrears in the sum of £2630 were outstanding.
- 10 The Applicant then entered into a Tenancy Agreement with the Respondent in respect of 27A High Street, Banchory which commenced on 1st February 2018.

- 11 In terms of Clause 7 of the Tenancy Agreement the Respondent undertook to pay rent at the rate of £720 per month.
- 12 The tenancy between the parties was terminated by mutual agreement on 31st May 2018. As at the date of termination arrears in the sum of £2010 were outstanding.
- 13 The Respondent is liable to make payment of the outstanding arrears in respect of both properties under the terms of the said Tenancy Agreements.

Reasons for Decision

- 14 Having considered the verbal and written representations from the Applicant the Tribunal was satisfied that it was able to make sufficient findings to determine the case. The Tribunal was satisfied that the Respondent had been given fair notice of the Hearing and had been given the opportunity to participate in the proceedings. He had put his position forward via email and had declined to attend the Case Management Discussion.
- 15 Whilst the Tribunal had some sympathy with the Respondent's position, it could see no other option but to conclude that the sums sought were lawfully due. The Tribunal was not satisfied that any separate agreement entered into regarding local housing allowance negated the obligation to pay rent under the terms of the tenancy agreement in respect of 72A High Street. The Tribunal found the submissions put forward by the Applicant's Representative to be credible and was conscious that the material facts were not disputed by the Respondent. The Tribunal was therefore satisfied that the Respondent was liable to make payment of the arrears due in respect of both properties.
- 16 Accordingly the Tribunal determined to make orders for payment against the Respondent in the sum of £2010 in respect of FTS/HPC/CV/19/0458 and £2630 in respect of FTS/HPC/CV/19/0459.
- 17 The decision of the Tribunal was unanimous.

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.

Ruth O'Hare

Legal Member/Chair

24/4/19

Date