

Housing and Property Chamber
First-tier Tribunal for Scotland



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/19/1193

Re: Property at 140 Hazel Avenue, Culloden, Inverness, IV2 7WS (“the Property”)

Parties:

Mr Ian George Maclean, 64 Slackbuie Way, Inverness, IV2 6AT (“the Applicant”)

Mr Alistair Rennie, 140 Hazel Avenue, Culloden, Inverness, IV2 7WS (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

This is an application for civil proceedings in terms of Rule 70 of the Tribunal Rules in respect of rent arrears said to be due of the property and also for

The Applicant attended the Case management Discussion on 19th June 2019 and was represented by Mr Brown Solicitor of Harper MacLeod Solicitors, Inverness. The Respondent was not present or represented. Mr Brown moved the Tribunal to proceed in the absence of the Respondent. The Tribunal had sight of a certificate of service by Sheriff Officer of the application and associated papers. These had been served personally on the Respondent at the property on 17th May 2019. The Tribunal granted the request to proceed in absence of the Respondent in terms of Rule 29 of the Tribunal Rules.

Ms Valerie Bremner

The Tribunal had sight of the application, tenancy agreement, Form AT5, Notice to Quit, statement of rent arrears and copy printout of similar property on rental market.

Mr Brown advised the Tribunal that the Respondent had signed a tenancy agreement for the property with effect from 9th May 2008. The rent payable was £380 per calendar month.

Mr Brown advised the Tribunal that he was seeking a payment order of £1400 for unpaid rent and £357 in respect of the difference in the monthly rent that could have been achieved for the property had the Respondent vacated it as of 18th January 2019 when the Notice to Quit served on the Respondent.

The Tribunal indicated that the sum being sought for difference in monthly rent due to failure to vacate the property in January 2019 might require to be a matter for proof as there was no evidence placed before the Tribunal at the Case Management Discussion stage from which it could find in fact that the property would have been rented immediately after that date or indeed the suggested increased monthly rent it would have achieved. After discussion Mr Brown indicated that he was not proceeding with the Application in respect of this head of claim.

The Tribunal was advised that the Respondent had paid rent of £380 per month up to January 2019 when he paid £120 instead of £380. No rent had been received at all since that payment on 9th January 2019. Mr Brown advised the Tribunal that the Applicant understood from communication with the Respondent that he had paid rent up to the date of a Notice to Quit served and was using rent money which he did have, not to pay rent, but towards a deposit for any property he was required to move to in the near future. In essence it was being suggested that the rent was being withheld on purpose. The Applicant confirmed that at no stage had the Respondent suggested that the arrears were due to delay or failure in the payment of housing or any other benefit.

Findings in Fact

1. The Applicant and Respondent entered into a tenancy agreement at the property with effect from 9th May 2008.
2. The monthly rent payable by the Respondent is £380.
3. The rent was paid in part in January 2019 and was not paid for February, March or April 2019.
4. The outstanding rent arrears amount to £1400.
5. The arrears are not due to any delay or failure in payment of Housing or other benefit.

Reasons for Decision

The Tribunal was satisfied that the sum of £1400 had accrued by way of rent arrears for the property, was lawfully due to the Applicant and that these were not due to any delay or failure in the payment of Housing or other benefit to the Respondent. It is therefore reasonable that a payment order be made.

Decision

The Tribunal makes a payment order in favour of the Applicant to be paid by the Respondent in the sum of £1400.

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.

Ms Valerie Bremner

Legal Member/Chair

19 June 2019

Date