



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

**Chamber Ref: FTS/HPC/CV/19/1314**

**Re: Property at 56 West Road, Newport on Tay, Fife, DD6 8HP (“the Property”)**

**Parties:**

**Mr Matthew Masters, The Old Boathouse, Woodhaven Pier, Wormit, Fife, DD6 8LA (“the Applicant”)**

**Mr Murray Dundas, 12 Linden Avenue, Newport-On-Tay, Fife, DD6 8DU (“the Respondent”)**

**Tribunal Members:**

**Ruth O’Hare (Legal Member)**

**Background**

- 1** By application dated 1 May 2019 the Applicant sought an order for payment against the Respondent for rent arrears in the sum of £1133.40. The following documentation was provided in support of the application:-
  - (i) Excerpt from Nationwide Bank Account;
  - (ii) Email correspondence between the Applicant and Respondent confirming payment arrangement;
  - (iii) Summary of application; and
  - (iv) Copy Tenancy Agreement between the Applicant and Respondent dated 11 July 2015.
- 2** By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds for acceptance of the application. A Case Management Discussion was assigned for 16<sup>th</sup> August 2019.
- 3** The application paperwork with notification of the Case Management Discussion was served on the Respondent by Sheriff Officer on 8<sup>th</sup> July 2019.

## **The Case Management Discussions**

- 4** The Case Management Discussion took place on 16<sup>th</sup> August 2019. The Applicant was present. The Respondent was represented by Mr Richard Gray of Flynn and Co Solicitors who requested an adjournment as the Respondent was abroad on business and had been unable to give his solicitor full instructions. The Tribunal allowed the adjournment but pointed out to Mr Gray that the matter had been ongoing since 2017 and the Respondent had at no time indicated that he disputed the fact the sum sought was due to the Applicant.
- 5** A further Case Management Discussion took place on 10<sup>th</sup> October 2019. The Applicant was again present. There was no appearance nor representation on behalf of the Respondent. The Tribunal Clerk telephoned Mr Gray's office and the Tribunal was subsequently advised that he would not be appearing as he had received no response from the Respondent. The Tribunal had regard to the history of the matter, the fact that the Respondent was aware of the proceedings, had been served with the paperwork by Sheriff Officers and had a responsibility to ensure that his interests were represented in the proceedings if that was his will. The Tribunal determined to proceed with the Case Management Discussion in the absence of the Respondent.
- 6** The Tribunal noted from the Applicant's submission that he sought payment of £1,133.40 which despite repeated requests had not been paid by the Respondent. The Tribunal noted that previous payment arrangements had been agreed at a reduced sum but not adhered to. The Applicant therefore sought the whole amount which the Respondent was liable for in terms of the Tenancy Agreement between the parties.

## **Findings in Fact and Law**

- 7** The parties entered into a Tenancy Agreement for the property dated 11 July 2015 which commenced on that date.
- 8** In terms of Clause 1.6 of the said Tenancy Agreement the Respondent undertook to pay rent of £700 per month.
- 9** In terms of Clause 3 of the said Tenancy Agreement the Respondent undertook to pay interest at 4% over the Clydesdale Bank base rate calculated from the date when any rent was overdue to the date of payment plus £10 for each statement or demand letter issued by the Applicant's Agent concerning rent arrears.
- 10** The tenancy between the parties terminated on 24<sup>th</sup> October 2016. As at that date arrears in the sum of £1952.33 were outstanding.
- 11** Between 1 January 2017 and 1 April 2017 the Respondent made payments totalling £400 in accordance with a payment agreement reached between the parties.

- 12 The interest due on the unpaid rent under Clause 3 of the said Tenancy Agreement amounts to £196.59.
- 13 Three demand letters were issued to the Respondent by the Applicant's Agent regarding the rent arrears. The costs due under Clause 3 of the said Tenancy Agreement amounts to £30.
- 14 The amount lawfully due by the Respondent to the Applicant following deduction of the remainder of the deposit in the sum of £645.52 is £1133.40.

### Reasons for Decision

- 15 The Tribunal was satisfied that it was able to make a decision at the Case Management Discussion and that to do so would not be contrary to the interests of the parties. It was noted that the Respondent's solicitor had not attended due to a lack of instructions from the Respondent. However the Tribunal did not consider this justified a further adjournment of the case. The Tribunal noted that the Respondent had received service of the application paperwork and had been able to instruct solicitors to appear at the first Case Management Discussion. He had a responsibility to ensure that he was adequately represented in the proceedings if he wished to dispute the terms of the application. The Tribunal also took into account the fact that the Respondent had previously admitted liability for the outstanding sum and had entered into a payment arrangement which had not been adhered to. It was noted that the sum claimed had been outstanding since 2016.
- 16 The Tribunal accepted that the Respondent was in breach of his obligations under the tenancy agreement in that he had failed to make payment of rent and associated penalties and that the sum of £1133.40 was due to the Applicant as a result. He had not sought to dispute the terms of the application in this regard and the Tribunal noted he had previously accepted that the sums were due.
- 17 Accordingly based on the above findings the Tribunal determined to make an order for payment in the sum of £1133.40 against the Respondent being rent and associated penalties lawfully due by him under the terms of the contract between the parties.

### 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

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Legal Member/Chair

10/10/19  
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Date