

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 Section**

Chamber Ref: FTS/HPC/CV/19/1565

**Re: Property at Flat 4 Inverhouse, Market Place, Inverurie, AB51 3SN (“the
Property”)**

Parties:

**Mr Andrew Allan, Mrs Alison Allan, Ardmurdo House, Inverurie, AB51 0LS;
Ardmurdo House, Inverurie, AB51 0LS (“the Applicant”)**

Mr Eimantas Sestokas, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatrige (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Applicant was entitled to payment by the
Respondent of £1,314.00**

Background:

The Applicants are seeking an order for payment of rent arrears for the property. The application in terms of Rule 70 (Civil Proceedings) was dated 20 May 2019. A copy rental agreement and relevant bank statements for August, September and November 2018 as well as text messages between the Applicants and the Respondent dated 28.12.2018, 28.1.2019, 13.2.2019, 17.2.2019, 18.2.2019, 25.2.2019, 5.3.2019 and, 7.3.2019 were submitted with the application. These are referred to for their terms and held to be incorporated herein. The Tribunal fixed a Case Management Discussion (CMD) for 24 September 2019. The Applicant Mrs Alison Allan attended on behalf of both Applicants. The Respondents did not attend.

The Respondents had been made aware of the date and time and venue by Service by Advertisement in terms of Rule 6A of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (the Rules).

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No representations were received from the Respondent. The Respondent had not contacted the Tribunal prior to the CMD and did not attend.

The Tribunal was satisfied that they had been appropriately notified of the application and the CMD.

The Case Management Discussion:

The Applicant asked for an order for payment as stated in the application. She confirmed that no further payments had been received. She confirmed that the Respondent had moved out of the property on 17 February 2019 and the sum claimed is the final amount outstanding. This had been intimated to the Respondent in text messages and he had acknowledged the rent arrears and offered payment. No such payment had been forthcoming apart from the release of the tenancy deposit to the Applicants in part payment of the arrears.

Findings in Fact:

- 1. The Applicants and the Respondent entered into a Tenancy Agreement commencing on 28 August 2017.**
- 2. Rent was due at the rate of £575 per month payable on the 28th day of the month.**
- 3. The Respondent vacated the property on 17 February 2019.**
- 4. Rent for 4 days in January following 28 January and 17 days in February 2019 was charged pro rata at £389.**
- 5. No payments of rent have been received from the Respondent in October and December 2018 and January and February 2019.**
- 6. In November 2018 £800 were paid in part payment of the October rent and full payment of the November rent.**
- 7. In terms of the Tenancy Agreement a deposit of £575 had been paid to the Applicants by the Respondent.**
- 8. The total rent arrears at the end of the tenancy were £1,889 as shown in the application.**
- 9. The Applicants had called on the Respondent to make payment of the rent arrears in various text messages and in particular had advised the Respondent of the full sum of £1,889 outstanding for the end of the tenancy in the text message of 13 February 2019.**
- 10. The Respondent had agreed in a reply to that message to agree to release the deposit towards the rent arrears.**
- 11. The deposit of £575 was released to the Applicants on 22 February 2019 in part payment of the outstanding rent.**
- 12. The Respondent had agreed in a text message of 13 February 2019 to make payments of £575 on 28 March 2019 and £660 on 28 February 2019.**
- 13. These payments were not made.**
- 14. The rent arrears under deduction of the released deposit sum are £1,314.00 and at the date of the CMD are still outstanding.**

Reasons for the Decision:

The Tribunal considered that the facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

(d) discussing what witnesses, documents and other evidence will be required;

(e) discussing whether or not a hearing is required; and

(f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Power to determine the proceedings without a hearing

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

The documents lodged are referred to for their terms and held to be incorporated herein.

The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case.

The Tribunal makes the decision on the basis of the written evidence lodged by the Applicants and the information given at the CMD by the Applicant Mrs Allan.

There was no valid defence to the action stated. It is not in dispute that the sums of arrears are due by the Respondent to the Applicants.

The Applicants are entitled to payment of the sum of £1,314.00 for outstanding rent arrears as set out in the application.

Decision:

The Tribunal grants an order for payment of the sum of £1,314.00.

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.

Petra Hennig-McFatrige

Legal Member/Chair

Date

24.5.19