



**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/19/1642

**Re: Property at 58 Dawson Road, Broughty Ferry, Dundee, DD5 1PY (“the
Property”)**

Parties:

**Mr Khaleefa Mahmood, 4 Lismore Place, Newton Mearns, Glasgow, G77 6UQ
 (“the Applicant”)**

**Ms Debbie Jackson, 58 Dawson Road, Broughty Ferry, Dundee, DD5 1PY (“the
Respondent”)**

Tribunal Members:

Graham Harding (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 an order for payment
by the Respondent in the sum of £201.47.**

Background

1. By application dated 27 May 2019 the Applicant’s representatives Baillie Shepherd, Solicitors, Dundee applied to the Tribunal for an order for payment in respect of alleged rent arrears arising from the Respondent’s tenancy of the property. The applicant’s representatives submitted a copy of the tenancy agreement, a rent statement and an order for payment dated 20 February 2019 in support of the application.
2. By Notice of Acceptance dated 28 June 2019 a legal member of the Tribunal accepted the application and a Case Management Discussion was assigned.

3. Intimation of the Case Management Discussion was given to the parties which was held at Dundee on 27 August 2019.
4. The Applicant's representatives advised the Tribunal in advance of the Case Management Discussion by letter dated 25 July 2019 that the sum claimed was to be reduced from £2184.28 to £201.47.
5. At the Case Management Discussion on 27 August 2019 the Applicant was represented by Ms Royle from the Applicant's representatives. The Respondent attended personally supported by Ms Miller and Ms Airth from Action for Children.
6. As a result of the issues raised at the Case Management Discussion on 27 August 2019 and noted in the Case Management Discussion note prepared by the legal member at that time a further Case Management Discussion was assigned to take place on 14 October 2019 at Dundee Carers Centre.
7. The Tribunal issued a Direction to the parties dated 27 August 2019 whereby the Respondent was required to provide:

"Written representations setting out clearly the reasons why the amount of £201.47 rent arrears for the property is disputed and to lodge any documents the Respondent wishes to rely on for that purpose. The Respondent is reminded that the representations must relate solely to this case and to this payment demand. Said documentation should be lodged with the Chamber no later than close of business on 17 September 2019"
8. The Applicant was required to provide:
 1. Written responses to the representations received from the Respondent.
 2. A copy of the decision by the First-tier Tribunal for Scotland Housing and Property Chamber relating to the order under case reference FTS/HPC/18/2153.The said documentation should be lodged with the Chamber no later than close of business on 1 October 2019."
9. The Respondent did not lodge any written representations.
10. The Applicant's representatives lodged a copy of the case referred to above on 27 August 2019.
11. By email dated 18 September 2019 the Applicant's representatives wrote to the Tribunal administration pointing out that the Respondent had failed to comply with the Tribunal's direction of 27 August 2019 and invited the Tribunal to find that the Respondent no longer wished to dispute the facts as stated in the application.

12. By email dated 10 October 2019 the Applicant's representatives advised the Tribunal administration that the Applicant would not be attending the Case Management Discussion nor would the Applicant's representatives. And submitted that as the Respondent had not complied with the Direction and had not provided written reasons as to why she should not be liable for the rent arrears accrued on the tenancy the order should be granted in the sum of £201.47 in the absence of the Applicant and his representatives.

The Case Management Discussion

13. A Case Management Discussion was held at Dundee Carers Centre, 132-134 Seagate, Dundee on 14 October 2019. The Respondent contacted the Tribunal administration by telephone shortly before the commencement of the Case Management discussion to advise that she was unable to attend as she had received a telephone call from her child's nursery to say that he was unwell and had to be collected. The Respondent was told that it was likely that the Case Management discussion could proceed in her absence. As had been indicated by email on 10 October neither the Applicant nor his representatives were in attendance. Ms Claire Miller from Action for Children did attend as a supporter for the Respondent.
14. The Tribunal being satisfied that the parties were aware of the date and time of the Case Management discussion and that there had been no request for a postponement determined in accordance with Rule 29 of the First-tier Tribunal housing and Property Chamber (Procedure) Regulations 2017 (the 2017 Rules) to proceed with the Case Management Discussion in the absence of the parties.
15. Ms Miller acknowledged that she had not been appointed as the Respondent's representative and was therefore in attendance to observe what was happening. She did however indicate to the Tribunal that it was her understanding that the Respondent had submitted written representations to the Tribunal in compliance with the Tribunal's direction of 27 August 2019. Ms Miller explained that she had attempted to submit written representations on behalf of the Respondent on 16 September 2019 but these had not been accepted as she was not the Respondent's representative. She had been told by the Respondent that she had then submitted them to the Tribunal. The Tribunal Clerk made enquiries but there was no record of written representations being received from the Respondent. Ms Miller indicated that the written representations that had been prepared related to the windows in the property not having handles and issues with the boiler and other matters.
16. Ms Miller also indicated that the Respondent herself was unwell in addition to her children and therefore was unable to attend the Case Management Discussion. The Tribunal noted however that the only reason given to the tribunal for her non-attendance had been that a child had to be collected from nursery due to illness.

17. The Tribunal noted that the decision of the First-tier Tribunal under case reference FTS/HPC/CV/18/2153 that had been provided by the Applicant's representatives dealt with the issue raised by the Respondent at the previous Case Management Discussion namely whether the additional payments of rent of £37.00 had been conditional upon certain repairs being carried out.
18. The Tribunal further noted that despite what Ms Miller may have been told by the Respondent the Tribunal had not received any written representations from the Respondent clearly stating her reasons why the sum claimed was not due.
19. The Tribunal also noted that the Case Management Discussion had been continued to allow the Respondent time to seek legal advice but there was no indication that she had done so.
20. The Tribunal considered the written submissions and documents provided by the Applicant's representatives.

Findings in Fact

21. The Respondent entered into a tenancy of the property with N&N Jamal Properties, Letting Agents, acting on behalf of the Applicant on 14 May 2012. From 25 May 2013 the tenancy continued by tacit relocation from year to year.
22. The rent increased from £695.00 per four weeks to £732.76 per 4 weeks from about August 2016.
23. The increase in rent was not conditional on repairs being carried out to the property by the Applicant.
24. The Respondent has accrued rent arrears in the sum of £201.47.

Reasons for Decision

25. The Respondent was given an opportunity to seek legal advice and to submit written reasons for why she should not be liable to pay the sum sought by the Applicant. The Tribunal issued a formal direction that made it clear that there could be consequences for a failure to comply.
26. Although the Respondent had assistance from Ms Miller of Action for Children to prepare written submissions she did not avail herself of the opportunity given to her. The Tribunal therefore had no real indication of the nature of any reasons why the sum said to be due by the Applicant would not be due. Such information as the Tribunal did have from Ms Miller at the Case Management discussion appeared to be the same as had been considered by the Tribunal and decided in Case reference FTS/HPC/CV/18/2153. It therefore would not

be open to this Tribunal to re-consider these matters as they would be *res judicata*.

27. The Respondent had requested further time at the previous Case Management discussion to allow her to take legal advice but there was no indication from the Respondent that she had in fact taken any legal advice.
28. The Respondent's reason for non-attendance at the Case Management Discussion did not entirely accord with the reason initially given by Ms Miller who had said that the Respondent was ill before confirming that the whole family was ill and a child had to be collected from nursery.
29. The Tribunal was satisfied from the documentary evidence provided by the Applicant's representatives that the parties had entered into a tenancy agreement. The rent had initially been 695.00 every four weeks. The rent had increased in about August 2016 to £732.76 every four weeks. The Respondent had paid the increased amount for a significant period before falling into arrears after her Housing Benefit was cut. Substantial arrears accrued and the Applicant obtained an order for payment under Case Reference FTS/HPC/CV/18/2153 in the sum of £2153.48. Thereafter further arrears accrued however following benefit payments from Dundee City Council in the sum of £2483.97 the balance remaining due amounted to £201.47. This was the amended amount claimed by the Applicant. The Tribunal is satisfied that this amount is due by the Respondent.
30. The rental agreement purports to provide that interest on any unpaid rent shall be applied at the rate of 10% per week on any arrears. The Applicant's representatives sought interest in the application at the judicial rate of 8% per annum. In their recent communication of 10 October the Applicant's representatives make no mention of seeking interest. In terms of Rule 41A of the 2017 Rules the Tribunal may award interest when making an order for payment. In the current circumstances in the absence of a direct submission from the Applicant's representatives the Tribunal has exercised its discretion not to award interest on the sum awarded to the Applicant.

Decision

31. The Tribunal finds the Applicant entitled to an order for payment by the Respondent in the sum of £201.47.

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.

Graham Harding
Legal Member/Chair

14 October, 2019
Date