

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 (“the 2014 Act”) and Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/CV/18/2395

**Re: Property at 46 Balgowan Avenue, Dundee, DD3 0EZ
 (“the Property”)**

Parties:

**Miss Leanne Carling, c/o Carling Property Group Limited, The Business Centre Church Street, Broughty Ferry, Dundee, DD5 1HB
 (“the Applicant”)**

**Miller Hendry, Solicitors, 13 Ward Road, Dundee, DD1 1LU, for BTO Solicitors LLP, 48 St Vincent Street, Glasgow, G2 5HS
 (“the Applicant’s Representative”)**

**Miss Natasha Kerr and Mr Stephen Bell, 46 Balgowan Avenue, Dundee, DD3 0EZ
 (“the Respondents”)**

**Peter Kinghorn, Dundee North Law Centre, 101 Whitfield Drive, Whitfield, Dundee, DD4 0DX
 (“the Respondents’ Representative”)**

Tribunal Members:

Susanne L M Tanner Q.C. (Legal Member)

33 Notice on Mr Stephen Bell, both dated 26 November 2018, notifying him that the lease would come to an end on 8 February 2019 and that the Applicant required possession of the Property as at midnight on 8 February 2019. On 29 November 2018, the Applicant's Representative requested a postponement of the CMD (and that in the related eviction Application) until on or after 9 February 2019. On 4 December 2018 the Applicant's Representative submitted a copy of the certificate of Service in respect of the NTQ and Section 33 Notice on 28 November 2018.

1.8. On 8 January 2019 the CMD scheduled for 16 January 2019 was postponed to a date to be determined.

1.9. On 22 February 2019, after the required period of notice had expired, the Applicant's Representative amended the Application to add Mr Stephen Bell as the Second Respondent.

1.10. A further CMD was fixed for 12 March 2019 and all parties were notified of the date, time and place of the CMD.

2. Second Case Management Discussion ("CMD") – 12 March 2019 at 1000h at Dundee Carers' Centre, Dundee

2.1. Ms Catherine Glen, Solicitor from Miller Hendry, the Applicant's Representative, attended with a trainee solicitor and the Applicant.

2.2. Peter Kinghorn, the Respondents' Representative attended on behalf of both Respondents. He produced a signed mandate in relation to representation at this CMD and the related CMD in CV/18/2395. He also submitted a letter stating that the Respondents wished to defend the civil Application on the grounds that the Property was in serious disrepair over a long period of time and repair work had not been carried out so full rental was not due. In the said letter he requested that an evidential hearing be fixed to allow him time to prepare the defence.

2.3. When the Application called, Ms Glen and Mr Kinghorn advised the tribunal chair that the parties had reached an agreement on the amount of arrears which were outstanding (in terms of an updated rent statement to 8 April 2019, which was produced by the Applicant's Representative at the hearing), namely £5079.85 and the restricted amount that the Applicant would accept by way of a payment order, half of that figure, £2539.93.

2.4. The Applicant's Representative confirmed that the Applicant agreed to accept a decree for payment for £2539.93, half of the current arrears.

2.5. Mr Kinghorn confirmed that he had received instructions from the Respondents last night to use his discretion to negotiate an acceptable outcome and although he had only had sight of the updated rent statement this morning and the Respondents had not seen it, he confirmed that he was quite clear about his instructions. Mr Kinghorn also confirmed that the Respondents understood that the agreement which had been reached was that an order for the full amount of £2539.93 would be made against both of them and that no application had been made for time to pay.

2.6. The Application was thereafter amended by the Applicant to seek the sum of £2539.93.

3. The tribunal makes the following findings-in-fact:

3.1. The proprietor of the Property is the Applicant.

3.2. There is a Short Assured Tenancy between the Applicant and the Respondents for the Property dated 8 February 2016.

3.3. The start date for the tenancy was 8 February 2016.

3.4. The lease has continued by tacit relocation until brought to an end by service of a Notice to Quit on 8 February 2019.

3.5. The rent payable is £790.00 per calendar month payable monthly in advance on the date of entry and thereafter on or before 8th of each month.

3.6. As at 12 March 2019, the Respondent is in arrears of rent of £5079.85.

3.7. The Applicant seeks the restricted sum of £2539.93 and the Respondents have agreed to pay the said amount to the Applicant.

4. Payment Order

4.1. The tribunal was satisfied on the basis of the Application and documentation lodged and the parties' written and oral representations that a payment order in the sum of £2539.93 should be made against both Respondents.

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.

S. L. M. Tanner

12 March 2019

Susanne L. M. Tanner Q.C.
Legal Member/Chair