

**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/19/3244**

**Re: Property at 5 E Tullideph Street, Dundee, DD2 2PQ (“the Property”)**

**Parties:**

**Mrs Elizabeth Reynolds, 1 Reedie Cottage, Westmuir, by Kirriemuir, DD8 5LX (“the Applicant”)**

**Ms Jennifer Young, ADDRESS UNKNOWN, ADDRESS UNKNOWN (“the Respondent”)**

**Tribunal Members:**

**Petra Hennig-McFatridge (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £3,600 should be granted in favour of the Applicant.**

**Procedural Background:**

**Background:**

The application was made on 2 October 2019. The application asked for an order for payment then of £2,250 rent arrears.

Attached to the application were:

1. the Tenancy Agreement for the property commencing 2 April 2017
2. Copy AT6 document dated 13 August 2019 with certificate of service by Sheriff Officers dated 14 August 2019
3. Copy Notice to Quit dated 13 August 2019 certificate of service by Sheriff Officers dated 14 August 2019
4. Printout of rental payments for the property to 2 February 2018 to 29 July 2019
5. Bank Statement extract showing rent payments to 29 July 2019

A Case Management Discussion (CMD) was scheduled for 9 December 2019 but Sheriff Officers reported they could not achieve service as the property appeared to be unoccupied. An application for service by advertisement was made by the Applicant.

On 28 November 2019 the Applicant amended the sum claimed to £3,600 and lodged an updated rent statement.

A further CMD was then fixed for 10 January 2020 and both parties advised of the date, time and venue. Service on the Respondent was carried out by advertising from 5 December 2019 to 10 January 2020.

The Tribunal thus considers that the appropriate notice has been given to the Respondent.

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

### **The Case Management Discussion**

The Applicant attended the CMD with her sister as supporter. The Respondent did not attend. The Applicant advised the Tribunal that no further payments had been received since the application was made. The last payment had been received as shown on the rent statement on 29 July 2019. When she attended on 2 October 2019, the date the Respondent was supposed to move out, she was denied access to the property by the Respondent. She appreciates that Sheriff Officers reported to the Tribunal that the property is no longer occupied but cannot verify that without legally gaining entry. No keys have been returned for the property and the Respondent has not advised her that she moved out. As far as the Applicant is concerned she is entitled to rent payments until the tenancy has been properly concluded. She referred the Tribunal to the documents lodged with the application, which are referred to for their terms and held to be incorporated herein. She was able to show the legal member bank transactions on her telephone showing that no payments of rent had been made in January, December, November and October since the application was made. When she attended the property recently and looked through the letterbox, the Applicant could see that some items were still in the property.

There were no representations from the Respondent.

### **Findings in Fact:**

- 1. The parties entered into an Assured Tenancy for the property with a start date of 2 April 2017 (Clause 5).**
- 2. Rent of £450 per month is payable monthly in advance (Clause 7) on the 1<sup>st</sup> day of the month (Clause 8).**
- 3. The Respondent has not made any payments towards the arrears since 29 July 2019 and no payments had been received for the months of May and March 2019.**

4. **The outstanding amount as of 10 January 2020 is £3,600, which is the equivalent of 8 rent payments.**
5. **The Respondent has not returned the keys to the property and has not advised the Applicant of a moving out date.**
6. **The contractual tenancy was terminated by the Notice to Quit on 2 October 2019 and continues as a statutory assured tenancy.**

#### **Reasons for the Decision:**

The Tribunal make the decision on the basis of the written evidence lodged by the Applicant and the information given at the hearing by the Applicant.

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.

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 Respondent did not make any written representations and did not attend the CMD. 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 Applicant is seeking an order for payment of rent arrears for the property.

In terms of the tenancy agreement the Applicant is entitled to monthly rental payments of £450. 8 months rent has not been paid. The Respondent has not given a leaving date and has not returned the keys to the property. She had advised the Applicant she would move out as soon as she could but has not provided any further information regarding the date she would do so. Items can be seen to remain within the property. The obligation to pay rent currently continues although the contractual tenancy has been terminated on 2 October 2019 by the Notice to Quit. The tenancy is now a statutory assured tenancy.

There was no defence to the action. The Respondent did not dispute that as of 10 January 2020 the arrears are £3,600. These are the arrears intimated and stated in the application as amended by the updated calculation produced on 28 November 2019.

### **Decision**

**The Tribunal grants an order against the Respondent for payment of the sum of £3,600 to the Applicant constituting arrears of rent for 8 months for the period up to and including 10 January 2020.**

### **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-McFatridge

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**Legal Member/Chair**

10. 1. 20  
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**Date**