



**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/19/3456**

**Re: Property at 59 (G) Marischal Street, Aberdeen, AB11 5AB (“the Property”)**

**Parties:**

**Mr Mohammed Hussain, 374 Great Western Road, Aberdeen, AB10 6PH (“the Applicant”)**

**Mr Krzysztof Szyposz, 8 (A) Powis Circle, Aberdeen, AB24 3YX (“the Respondent”)**

**Tribunal Members:**

**Neil Kinnear (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**Background**

This is an application for a payment order dated 28<sup>th</sup> October 2019 and brought in terms of Rule 70 (Application for civil proceedings in relation to an assured tenancy under the 1988 Act) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant originally brought this application in terms of Rule 111 (Application for civil proceedings in relation to a private residential tenancy) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, but subsequently amended the rule under which this application is brought from Rule 111 to Rule 70.

The Applicant sought payment of arrears in rental payments of £990.00 in relation to the Property from the Respondent, and provided with his application copies of two short assured tenancy agreements and rent arrears details.

The short assured tenancy agreements had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

The Respondent had been validly served by sheriff officers with the notification, application, papers, guidance notes from the Tribunal on 9<sup>th</sup> December 2019, and the Tribunal was provided with the execution of service.

A Case Management Discussion was held on 20<sup>th</sup> January 2020 at Credo Centre, 14-20 John Street, Aberdeen. The Applicant appeared, and was not represented. The Respondent did not appear, nor was he represented. The Respondent had not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal noted that this application is brought under Rule 111 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, but that it relates to two short assured tenancy agreements under the *Housing (Scotland) Act 1988*, and accordingly it appeared that it should have been brought under Rule 70 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Tribunal considered that an amendment to change the rule under which the application is brought does not raise a new issue, and accordingly the Applicant may request to amend the application.

However, Rule 14A(1) provides that such a request to amend must be intimated to the Respondent and the Tribunal at least 14 days prior to a Case Management Discussion.

The Applicant confirmed that he wished to amend his application in terms of Rule 14A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, to bring it under Rule 70 instead of Rule 111.

He confirmed that he would intimate a copy of the written amendment to the Tribunal and to the Respondent at least 14 days prior to a continued Case Management Discussion by post, or preferably by recorded delivery post.

The Tribunal noted that the Applicant had only provided the first page of each of the two tenancy agreements he relied upon. The Applicant confirmed that he retained full copies of all the pages of those lease agreements, and would provide the Tribunal with copies of those.

The Tribunal noted that in order to calculate what sums might be owed by the Respondent to the Applicant in rent arrears, it required to know the date when the Respondent left the Property. The Applicant did not have that information with him, but

indicated that he could check that date in his records at home and advise the Tribunal of the same.

The Tribunal noted that the Applicant seeks payment of £990.00, but did not provide any rent arrears statement or other documentation disclosing how that sum is calculated. The Applicant indicated that he would provide this information to the Tribunal.

The Tribunal noted that the Applicant is co-proprietor with three other persons of the Property. The Applicant confirmed that these were his wife and two sons.

The Tribunal asked the Applicant to obtain confirmation from his two sons that they were aware of the granting of the lease, and of whether they wished to be added as joint applicants to this application or were content for the Applicant to bring it on their behalf.

Further, the Tribunal noted that the third co-proprietor of the Property, the Applicant's wife, is also named as joint landlord on the two tenancy agreements with the Applicant. The Tribunal asked the Applicant to obtain confirmation from her that she was aware of the granting of the lease and consented to this application being brought by the Applicant, or alternatively that she wished to be added as a party to this application.

The Tribunal decided that it was in the interests of justice to continue the application to allow the Applicant to amend this application and to provide the various information above-noted to the Tribunal.

Rule 28 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended allows the Tribunal discretion on its own initiative or on an application by a party, to adjourn a hearing.

The Tribunal considered it to be reasonable to adjourn the Case Management Discussion in the circumstances, and consistent with the overriding objective of the Tribunal to deal with proceedings justly and in a manner which is proportionate to the complexity of the issues and the resources of the parties in terms of Rule 2 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

In these circumstances, the Tribunal set a further Case Management Discussion and issued a Direction to the Applicant noting the various issues which it required him to address.

A continued Case Management Discussion was held on 20<sup>th</sup> February 2020 at Credo Centre, 14-20 John Street, Aberdeen. The Applicant again appeared, and again was not represented. The Respondent again did not appear, nor was he represented. The Respondent had not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal noted that the Applicant had fully complied with the Direction and provided all the information requested, except that he had omitted to intimate the

proposed amendment to change the rule under which the application is brought to the Respondent.

The Tribunal considered it to be reasonable to again adjourn the Case Management Discussion in those circumstances, in order to allow the Applicant to intimate the proposed amendment to the Respondent, and set a further continued Case Management Discussion for 20<sup>th</sup> March 2020.

That Case Management Discussion had to be cancelled as a result of the coronavirus pandemic, and the lockdown imposed in the United Kingdom as a consequence thereof. The Parties were subsequently notified with the details of a Tele-Conference and provided with dial-in details.

### **Continued Case Management Discussion**

A further continued Case Management Discussion was held at 10.00 on 10<sup>th</sup> July 2020 by Tele-Conference. The Applicant participated, and was not represented. The Respondent did not participate, nor was he represented.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Tribunal noted that the Applicant had provided confirmation that the tenancy deposit had been repaid in its entirety to him. The Applicant confirmed that this had been done utilising the deposit scheme processes, and that the whole amount of the deposit had been returned to him in respect of the cost of repair and reinstatement work which he had required to carry out as a result of the condition in which the Respondent had left the Property.

The Applicant had produced to the Tribunal a copy of his letter to the Respondent intimating the proposed amendment to the Rule under which this application is brought, together with proof of posting dated 26<sup>th</sup> February 2020. He requested to amend the Rule number in his application from Rule 111 to Rule 70.

The Tribunal consented to the amendment in terms of Rule 14A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Tribunal was invited by the Applicant with reference to the application and papers to grant an order for payment of the sum of £990.00, which is the current amount of rent arrears as of today's date.

### **Statement of Reasons**

Section 16 of the *Housing (Scotland) Act 2014* provides as follows:

“16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3) Part 1 of schedule 1 makes minor and consequential amendments.”

Accordingly, the Tribunal has jurisdiction in relation to claims by a landlord (such as the Applicant) for payment of unpaid rental against a tenant (such as the Respondent) under short assured tenancies such as these.

The Tribunal considered the terms of the short assured tenancy agreements, the copy rent arrears information provided, the various other information provided by the Applicant, and the Applicant’s submissions, and was satisfied that this disclosed an outstanding balance due by the Respondent to the Applicant in respect of rent arrears of £990.00.

Accordingly, the Tribunal shall make an order for payment of that sum.

## **Decision**

In these circumstances, the Tribunal will make an order for payment by the Respondent to the Applicant of the sum of £990.00.

## **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.**

**N. Kinnear**

**10 July 2020**

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**Legal Member/Chair**

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**Date**