



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section s16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/CV/18/2030

**Re: Property at 56 Dalhousie Road, Brought Ferry, Dundee, DD5 2SW (“the
Property”)**

Parties:

**Mr Greg Stewart, Unit 309, 38 Helen Street, Teneriffe, Brisbane, QLD, 4005,
Australia (“the Applicant”)**

**Ms Nicola Brown Nee Forster, 3 Grange Gait, Monifieth, DD5 4pl (“the
Respondent”)**

Tribunal Members:

Ewan Miller (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Applicant should be granted a payment order
against the Respondent in the sum of £1770.13**

Background

The Applicant had let the Property to the Respondent in November 2015. Arrears of rent had arisen and the Applicant had applied to the Tribunal on 8 August 2018 for a payment order of £2420.13.

A Case Management Discussion (“CMD”) had taken place on 28 September 2018. Mr Kevin Webster had appeared as the Applicant’s agent. The Respondent had appeared and represented herself. The amount of rent did not appear to be in dispute at that stage but the Respondent indicated that she was withholding rent as a result of repairs she alleged were outstanding. As a result, the matter was referred on to a full hearing of the Tribunal on 9 November 2018

At the hearing on 9 November 2018, whilst Mr Webster attended, the Respondent did not. She advised just prior to the hearing that she was unwell and unable to attend.

The Tribunal, at that point, erred on the side of caution and took the Respondent's non-appearance on the grounds of ill-health at face value. The hearing was continued until 30 November 2018

The Hearing

The continued hearing took place on 30 November 2018 at the Hilltown Community Centre at 2pm. Mr Webster again appeared for the Applicant. The Respondent did not appear and no prior notice or reasons had been given for her non-attendance. The Tribunal was satisfied that the Respondent had been given appropriate notice of the hearing on 30 November 2018. In view of the fact that matters had already been referred from a CMD to a hearing and that hearing had been continued to accommodate the Respondent, the Tribunal did not view it as unreasonable or unfair to make a decision based on the evidence before it at the continued hearing

Findings in Fact

The tribunal found the following facts to be established:-

- The Applicant was the owner of the Property
- The Applicant had let the Property to the Respondent under a Short Assured Tenancy dated 28 and 30 October 2015
- The monthly rental under the lease was £650 per calendar month
- Rental arrears of £2420.13 built up
- The Applicant had recovered the deposit of £650 paid under the lease from the relevant tenancy deposit scheme and had applied this to the rental arrears
- The arrears now outstanding were £1770.13

Reasons for Decision

The Tribunal was readily satisfied that it was appropriate to grant the payment order for the sum sought after recovery of the deposit. The Respondent had, at the initial CMD, made allegations that there were items of disrepair. However, the Tribunal understood there had been a separate application to the Tribunal by the Respondent under the relevant repairing standard legislation. This application had not been upheld. There appeared to be a minor issue around a toilet seat which needed to be replaced and was discussed at the CMD. The Tribunal considered that there was insufficient evidence to prove that the Respondent had been validly withholding rent and was entitled to any set off. The Respondent had failed to appear at the last minute at the first hearing. She had failed to appear at the second hearing. There was no proper evidence adduced to substantiate her case. The Applicant, on the other hand, had produced evidence of the rent arrears and his agent had appeared and was credible. The Tribunal was satisfied that there were arrears of rent and that there were no valid ground for any set off or withholding to occur. On that basis the Tribunal was satisfied that it was appropriate to grant the order sought

Decision

The Tribunal determined to grant a payment order in favour of the Applicant against the Respondent in the sum of £1770.13

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.

E Miller

Legal Member/Chair

30/4/18

Date