

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 the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) and Rule 70 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules)

Chamber Ref: FTS/HPC/CV/18/3194

Re: Property at 18 Everest Road, Earlston (“the Property”)

Parties:

**Ms Angela Scott, Cakemuir Cottage, Nenthorn, Kelso, TD5 7RY
 (“the Applicant”)**

**Ms Lindsey Hatton, present whereabouts unknown, previously residing at 18
 Everest Road, Earlston, TD4 6HB
 (“the Respondent”)**

Tribunal Members:

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

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent should pay the Applicant the sum of SIX HUNDRED AND TWENTY FIVE POUNDS (£625.00) STERLING; and made an Order for Payment in respect of the said sum; together with interest running from the date of the decision of the tribunal at eight per cent per annum until paid, in terms of Rule 41A of the Tribunal’s Rules

STATEMENT OF REASONS

1. Procedural Background

1.1. The Applicant’s Representative made an Application to the tribunal on 26 November 2018 in terms of Section 16 of the 2014 Act and Rule 70 of the 2017

Rules, seeking an order for payment against the Respondent in the sum of £625.00 in respect of rent arrears; together with interest at the rate provided for in the tenancy agreement.

1.2. The documentation with the Application comprised:

1.2.1. Short Assured Tenancy Agreement dated 12 April 2017;

1.2.2. AT5 form dated 5 April 2017;

1.2.3. Rent Statement;

1.2.4. Bank Statements;

1.2.5. Email correspondence with Respondent; and

1.2.6. Documents relating to property damage.

1.3. On 20 December 2018 the tribunal asked the Applicant to provide additional information.

1.4. On 7 February 2019 the Applicant provided confirmation that the Applicant vacated the Property on 1 December and attached a checkout report and a photograph dated 2 December 2018; copy email from the Respondent dated 30 October 2018 and further specification regarding rent arrears and other matters.

1.5. The Application and documentation submitted with it was considered by the legal member of the tribunal with delegated powers of the Chamber President.

1.6. On 21 February 2019, the Application, which comprised documents received between 26 November 2018 and 7 February 2019, was accepted for determination by the tribunal.

1.7. A Case Management Discussion ("CMD") was fixed for 11 April 2019 at 10.00 at George House, 126 George Street, Edinburgh.

1.8. By letter of 30 March 2019, parties were notified of the date, time and place of the CMD and were told that they were required to attend. Parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application, which may involve making or refusing a payment order. Parties were advised that if they do not attend the CMD that would not stop a decision or order being made by the tribunal if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair. The Respondent was invited to submit written representations in response to the Application by 7 April 2019.

1.9. On 20 March 2019, Sheriff Officers attempted to effect service on the Respondent at the address provided but were unable to do so.

1.10. The CMD was cancelled due to the failure to serve the application paperwork and notification of CMD on the Respondent.

1.11. A new CMD was fixed for 7 June 2019 at 1130h at Langlee Community Centre, Galashiels. Parties were notified of the date, time and place of the CMD and were told that they were required to attend. Parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application, which may involve making or refusing a payment order. Parties were advised that if they do not attend the CMD that would not stop a decision or order being made by the tribunal if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair.

1.12. Between 29 April 2019 and 7 June 2019, service by advertisement on the Respondent on the tribunal's website of the Case Management Discussion notification letter dated 29 April 2019 was carried out.

1.13. The Respondent did not submit any written representations or make any contact with the tribunal up to and including the date of the CMD on 7 June 2019.

1.14. The tribunal issued Directions to the Applicant dated 30 May 2019.

2. CMD: 7 June 2019 at 1130h, Langlee Community Centre, Marigold Drive, Galashiels

2.1. The Applicant attended.

2.2. The Respondent did not attend the hearing and made no contact with the tribunal's administration or venue. The tribunal waited until 1135h to start the CMD. The tribunal was satisfied in terms of Rule 29 of the 2017 Rules that the requirements of Rule 24(1) of the 2017 Rules regarding the giving of notice of a hearing had been duly complied with and proceeded with the Application upon the representations of the Applicant and all the material before it.

2.3. The Applicant confirmed that she wanted to restrict the present claim to one months' rent plus interest from the date of any decision. The amount sought is £625 for the period 16 November 2018 to 15 December 2018.

2.4. The Applicant confirmed that she intended to claim the remainder of the rent arrears to the end of the tenancy and the damage to the Property and contents in a separate claim to the tribunal.

2.5. The Short Assured Tenancy agreement dated 12 April 2017 provides that rent is payable at £625 per calendar month in advance. The rent remained at the same level throughout the tenancy. The Applicant made reference to the rent statement which had been lodged to show the arrears and the bank statements which had been were lodged to show that payments were made and there has been nothing further paid by the Respondent.

2.6. The Applicant stated that the tenancy ended on 30 December 2018, following notice from the tenant by email of 30 October 2018. The Applicant confirmed the Respondent left the Property prior to the end of December 2018.

2.7. The interest claimed is that provided for the in the tenancy agreement, clause 19.2 which provides for interest on rent arrears at eight per cent per annum. The Applicant confirmed that she wished to amend the Application to claim from the date of the decision.

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

3.1. There was a Short Assured Tenancy between the Applicant and the Respondent dated 12 April 2017.

3.2. The initial tenancy term was for the period 15 April 2017 to 16 October 2017. After that time the lease tacitly relocated on a monthly basis until it ended on 30 December 2018.

3.3. The rent payable in terms of the lease was £625.00 per calendar month payable monthly in advance on the 15th of each month.

3.4. The rent arrears for the period 15th November 2018 to 15 December 2018 were £625.

3.5. The Applicant received the Respondent's deposit via the deposit protection scheme but none of the sum paid to the Applicant related to rent arrears.

4. **Decision**

4.1. The tribunal determined on the basis of the Application (including supporting documents) and the oral representations made on behalf of the Applicant; and in the absence of written or oral submissions from the Respondent; that the Applicant had proved that the Respondents owes the Applicant the amended sum of £625.00 sought on behalf of the Applicant and made an order for payment by the Respondent to the Applicant for the said sum.

4.2. The contractual rate of interest in the tenancy agreement is eight per cent per annum and the tribunal included interest at this rate from the date of the decision until paid.

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 Tanner

7 June 2019

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