

**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 71 of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/19/2867**

**Re: Property at 30I Polepark Road, Dundee, DD1 5QS (“the Property”)**

**Parties:**

**Stuart Ball, C/O SGL Property Ltd, India Buildings, 86 Bell Street, Dundee, DD1 1HN (“the Applicant”)**

**Mr Josh Maddin, 30I Polepark Road, Dundee, DD1 5QS (“the Respondent”)**

**Tribunal Members:**

**Petra Hennig-McFatrige (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 £2,370 should be granted in favour of the Applicant.**

**Procedural Background:**

The Applicant is seeking an order for payment of rent arrears for the property. An application in terms of Rule 70 of the Rules of Procedure was received by the Tribunal on 9 September 2019 and the sum outstanding stated as £2,765 arising from a Private Residential Tenancy Agreement between the parties for the property. Following correspondence with the Tribunal the application was amended to show that it was made under Rule 11 of the Rules of Procedure and amending the Applicant to Mr Stuart Ball. As of 22 October 2019 the application was so amended.

The application was accompanied by a copy of the Private Residential Tenancy Agreement commencing 1 March 2019, rental statement up to and including 1 September 2019, Notice to Leave dated 2 July 2019 and execution of service by Sheriff Officers of same dated 4 July 2019.

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(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.

In terms of the tenancy agreement the Applicant is entitled to monthly rental payments of £395. Only one payment has been made.

The sum sought in the application was not quantified other than by the entries in Part 5 (b) of the application, which stated the arrears of rent were of £2,765 as per 9 September 2019. The sum sought in the order has not been updated prior to the calling of the case at the CMD on 23 December 2019. This sum was an incorrect calculation and the arrears as of 9 September 2019 when the application was made were £2,370. This is the sum awarded in the order.

There was no defence to the action. The Respondent did not dispute that as of 9 September 2019 the arrears are £2,370. These are the arrears intimated and stated in the application. The Tribunal was not prepared to grant an order for an amount greater than the arrears evidenced in the application and the rental statement only supported documented arrears of £2,370. As the application had not been amended prior to the CMD fair notice had not been given to the Respondent of the updated sum of arrears.

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On 22 November 2019 the Respondent had been served with the Case Management Discussion documentation fixed for 23 December 2019. This included the information that the tribunal may make a decision at the CMD and in the absence of a party.

No written representations had been received by the Respondent.

At the CMD the Applicant's representative Jay Lawson from Muir Myles Laverty attended. The Respondent did not attend.

### **The Case Management Discussion:**

Mr Lawson referred to the application. The application stated that as of 9 September 2019 the arrears amounted to £2,765. However the rental statement submitted showed the arrears as of September 2019 at an amount of £2,370. Mr Lawson clarified that the entry in the column for "Total due" had been used as the arrears figure, not the entry in the column "balance outstanding". He confirmed that the arrears on 9 September 2019 as per the rental statement submitted with the application were £2,370. He further stated that the arrears now stood at £3,555 as no further payments had been received.

The documents lodged in evidence are referred to for their terms and held to be incorporated herein.

### **Findings in Fact:**

- 1. The Applicants and the Respondents entered into a Private Residential Tenancy agreement commencing on 1 March 2019.**
- 2. The tenancy is ongoing.**
- 3. The monthly rent due for the property is £395 due on the first date of the month in advance payable by bank transfer**
- 4. No payments have been received after the initial payment of rent of £395 on 19 February 2019 for the period of 1 March 2019 to 1 April 2019**
- 5. As at 9 September 2019 the arrears were £2,370 for the period of 6 months for the months of April to September 2019**

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

The Tribunal make the decision on the basis of the written evidence lodged and the evidence of the Applicant's representative at the CMD. 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.

## Decision

The Tribunal grants an order against the Respondent for payment of the sum of £2,370 to the Applicant constituting arrears of rent for 6 months for the period of 1 April 2019 to 1 September 2019.

## 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.

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Legal Member/Chair

27.12.19

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Date