

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/19/0787

**Re: Property at Flat 7, 66 Cow Wynd, Falkirk, FK1 5EA
 (“the Property”)**

Parties:

**Mr David MacDonald and Mrs Edele MacDonald, c/a Marshall Wilson Law Group Limited, 2 High Street, Falkirk, FK1 5EA
 (“the Applicants”)**

**Marshall Wilson Law Group Limited, 2 High Street, Falkirk, FK1 1EZ
 (“the Applicants’ Representative”)**

Mr Thomas McFarlane, Flat 7, Cow Wynd, Falkirk, FK1 5EA (“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 TWO THOUSAND FOUR HUNDRED AND NINETY SEVEN POUNDS (£2,497.00) STERLING; and made an Order for Payment in respect of the said sum

STATEMENT OF REASONS

1. Procedural Background

- 1.1. The Applicant's Representative made an Application to the tribunal on 11 March 2019 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 £2,022.00 in respect of rent arrears; together with interest at the rate of four per cent above Royal Bank of Scotland base rate in terms of Clause 1 of the tenancy agreement.
- 1.2. The documentation with the Application comprised:
 - 1.2.1. a copy of a Short Assured Tenancy agreement dated 1 November 2016;
 - 1.2.2. a copy of a Notice to Quit dated 8 February 2019;
 - 1.2.3. A copy of an AT6 notice dated 8 February 2019;
 - 1.2.4. Proof of service of the said Notices dated 8 February 2019;
 - 1.2.5. Section 11 notice sent to the local authority.
- 1.3. A rent statement was requested by the tribunal from the Applicant's Representative.
- 1.4. On 1 April 2019, the Applicant's Representative produced a rent statement for the period to 30 April 2019. The Applicant's Representative amended the civil Application to seek rent arrears to 30 April 2019 in the sum of £2,497.00.
- 1.5. The Application was accepted for determination by a tribunal on 16 April 2019. Both parties were notified by letters dated 25 April 2019 of the date, time and place of Case Management Discussion ("CMD") in relation to the Application on 6 June 2019. The Respondent was invited to make written representations in response to the Application by 17 May 2019. Both parties were advised that they were required to attend the CMD. The 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. The parties were also advised that if they do not attend the CMD this will not stop a decision or order being made if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair. The Application paperwork and notification was served on the Respondent by Sheriff Officers on 29 April 2019.

1.7. The Respondent did not submit any written representations in response to the Application or make any contact with the tribunal's administration.

2. Case Management Discussion ("CMD"): 6 June 2019, Wallace House, Maxwell Place, Stirling, FK8 1JU

2.1. Fiona Munn from the Applicant's Representative attended the CMD.

2.2. The Respondent did not attend the CMD, nor did he make contact with the tribunal or its administration to advise that he could not attend. The tribunal was satisfied 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 Applicants' Representative and all the material before it, in terms of Rule 29 of the 2017 Rules.

2.3. The tribunal chair explained the purpose of the CMD in terms of Rule 17 of the 2017 Rules and stated that as parties had already been notified, the tribunal could do anything at a CMD which it may do at a hearing, including issuing a decision.

2.4. Ms Munn stated that she was seeking a payment order for the principal amended sum of £2,497.00. The Applicants also seek interest at the rate of four per cent above Royal Bank of Scotland base rate.

2.5. Miss Munn referred to the Short Assured Tenancy agreement which provides for rent at the date of £474 per month from 1 November 2016 to date. She referred to the rent statement which had been lodged. It shows rent arrears for the period to 30 April 2019 as £2,497.00, which is the amended principal sum sought. She explained that the Applicants had produced the rent statement for the period to 31 January 2019 and passed it to her office for the purpose of raising proceedings. She added the rent due for February, March and April 2019. The rent statement is only for the period to 30 April 2019. She did not wish to further amend to seek the rent due to date if would cause any delay to proceedings as she wished to move for a payment order today, while seeking her client's right to claim any further rent arrears by separate application in respect of the period from 1 May 2019 to the date that the Respondent removes from the Property.

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

3.1. There is a Short Assured Tenancy between the Applicant and the Respondent dated 1 November 2016.

- 3.2. The initial tenancy term was for the period 1 November 2016 to 31 October 2017. Since that time the lease has tacitly relocated on an annual basis.
- 3.3. The rent payable in terms of the lease was £475.00 per calendar month payable monthly in advance on the 1st of each month.
- 3.4. As at 30 April 2019, the rent arrears were £2,497.00.
- 3.5. Rent arrears have continued to accrue in the period since 30 April 2019.
- 3.6. Interest is due in terms of the tenancy agreement at the rate of four per cent per annum over the Royal Bank of Scotland base rate, which is 0.75 per cent, giving an effective interest rate of 4.75 per cent per annum on any unpaid rent until paid.

4. Discussion

- 4.1. The tribunal determined on the basis of the Application (including supporting documents) and the oral representations made on behalf of the Applicants; and in the absence of written or oral submissions from the Respondent; that the Applicants had proved that the Respondents owes the Applicant the amended sum of £2,497.00 sought on behalf of the Applicants in respect of the period to 30 April 2019; and made an order for payment by the Respondent to the Applicant for the said sum.
- 4.2. The tribunal awarded interest in terms of Rule 41A(2)(a) at the rate stated in the tenancy agreement of 4.75 per cent per year, running from the date of this decision.

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.



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

6 June 2019