

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 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/CV/18/2006

Re: Property at 13B Main Street, Dundee, DD3 7EY (“the Property”)

Parties:

Mr Abdul Rashid, 208 Broughty Ferry Road, Dundee, DD4 6LD (“the Applicant”)

Ms Nicola Smith, 13B Main Street, Dundee, DD3 7EY (“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 £796.01 in relation to rent arrears for the period of 13.11.2017 to 19 .08.2018 should be granted.

Procedural Background:

The Applicant is seeking an order for payment of rent arrears for the property. An application in terms of Rule 70 (Civil Proceedings) was lodged on 6 August 2018 and the sum outstanding stated as £628.08 rent arrears as at 22 July 2018. A copy lease contract and a rent shortfall statement were submitted with the application.

The Tribunal initially requested further information regarding the calculation of the arrears and received a reply with a printout of Council payments in the weeks from 13 November 2017 to 19 August 2018 with an added calculation showing a shortfall for that period of £796.04 on 24 August 2018 and a letter dated 23 August 2018 detailing arrears in 2017 on 27 August 2018. In an email of 3 September 2018 the Applicant clarified that he is seeking arrears on the basis of a 4 weekly charge of £756.28 in terms of the Dundee Council allowance rate rather than the stated £759 in the lease contract.

The Tribunal first fixed a Case Management Discussion for 25 October 2018. Neither party attended. When the Applicant was contacted on the day he advised that he had entered the wrong date in his diary and thus the Case Management Discussion was adjourned to a new date on 13 December 2018. The Case Management Discussion Note of 25 October 2018 is referred to for its terms and held to be incorporated herein. The original case papers up to and including the notification of the date of 25 October 2018 had been served on the Respondent on 10 October 2018 by Sheriff Officers.

Sheriff Officers served a letter from the Tribunal dated 20 November 2018 containing the notification of the Case Management Discussion of today's date, the notes referred to above and guidance that any representations had to be received by 5 December 2018 and that the Tribunal may make a decision at the CMD on the Respondent on 21 November 2018 and thus the required notice in terms of rule 17 of the rules of procedure (the rules) had been given.

At the Case Management Discussion on 13 December 2018 the Applicant attended together with his son, who acted as supporter.

The Respondent did not attend.

Submissions at the Case Management Discussion:

The Applicant at the Case Management Discussion tried to explain the handwritten calculations on his letter of 23 August 2018 and the additions on the printout received by the Tribunal on 24 August 2018. However, it was not possible on the basis of the information provided to match these calculations to the sums stated in the original application. The Applicant then asked that an order be granted for the sum of £796.01, which is the sum for which the printout showed the exact figures paid by the Council towards the rent and the exact time periods these payments covered, namely the period from 13 November 2017 to 19 August 2018. The sum of the payments made by the Council during that 40 week period in total was £6,766.79 rather than £6,766.76 as stated on his calculation. The total charge due for the 40 week period on the basis of the £756.28 per four weeks charged in terms of the lease contract read together with the email of 3 September 2018 was £7,562.80 and thus the shortfall and sum sought was £796.01 rather than £796.04

The Respondents had not lodged a defence to the application and had made no representations.

Findings in Fact:

- 1. The Applicants and the Respondents entered into a Tenancy Agreement on 25 January 2017 with an initial end date on 25 July 2017 .**
- 2. The Respondent remains resident in the property as at 13 December 2018.**
- 3. In terms of the Agreement rent of £759 is due in advance every 4 weeks (Clause 6).**

4. The Applicant actually only charges the sum of £756.28 per four weeks on the basis that this is the sum Dundee Council set as the appropriate rate.
5. The Applicant receives direct payments of varying sums per four weeks for rental payments for the property from Dundee City Council and these are set out for the period from 13.11.2017 to 19.08.2018 in the printout submitted for that period.
6. The total payments made by the Council for that period amount to £6,766.79
7. The total rent due for that period was £7,562.80.
8. The arrears of rent for the period of 13.11.2017 to 19.08.2018 are £796.01.
9. The Respondent had been advised of the amended sum by service of the printout of payments for that period.

Reasons for the Decision:

The Tribunal make the decision on the basis of the written evidence lodged by the Applicant and the information given at the hearing by the Applicant. There were no representations by the Respondent and thus there is no dispute about the facts of the case.

The rent outstanding for the period from 13.11.2017 to 19.08.2018 based on the amounts paid as per the schedule lodged and the rent charge is £796.01. Although the original application only referred to an order for £628.08, the updated sum and the calculation thereof had been intimated to the Respondents prior to the Case Management Discussion in form of the printout and handwritten calculation of a shortfall of £796.04 for this period. This contained an arithmetical error of £0.03.

There was no valid defence to the action. It is not in dispute that the sum of arrears is due by the Respondent to the Applicant for said period.

The Applicant is entitled to payment of the sum of £796.01 of rent arrears for the period of 13 November 2017 to 19 August 2018.

Decision:

The Tribunal grants an order for payment of the sum of £796.01.

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.

P Hennig-McFatrige

Legal Member/Chair

13 December 2018
Date