

**Housing and Property Chamber**  
**First-tier Tribunal for Scotland**

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**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/18/3055**

**Re: Property at 20/1 Howe Street, Edinburgh, EH3 6TG (“the Property”)**

**Parties:**

**Ms Amy Irving, c/o Ben Property, 3 Manor Place, Edinburgh, EH3 7DH  
 (“the Applicant”)**

**Lindsays, Solicitors, Caledonian Exchange, 19A Canning Street, Edinburgh,  
EH3 8HE  
 (“the Applicant’s Representative”)**

**Miss Natasha Hope and Mr William MacIntyre, 20/1 Howe Street, Edinburgh,  
EH3 6TG  
 (“the Respondents”)**

**Tribunal Members:**

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

**Decision (in absence of the Respondents)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent should pay the Applicant the sum of EIGHT THOUSAND SEVEN HUNDRED AND FIFTY POUNDS (£8750.00) STERLING; and made an Order for Payment in respect of the said sum.**

## **STATEMENT OF REASONS**

### **Background**

1. On 13 November 2018 the Applicant made an Application to the tribunal “the Application”) under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”) for civil proceedings in relation to an assured tenancy under the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”).
2. In the Application the Applicant sought payment from the Respondent of the sum of £6,250.00 in respect of rent arrears under the private residential tenancy between the parties dated 14 June 2018. The sum was amended to £8,750.00 at the Case Management Discussion on 18 January 2019, following prior intimation to the Respondents dated 16 January 2019 (see below).
3. The sum sought by the Applicant represented rent arrears as shown on an updated rental statement for the period from 4 June 2018 to 8 January 2019 (Applicant’s Documents (1) and (2) which were intimated to the Respondents by letter dated 16 January 2019 and lodged at the CMD on 18 January 2019; see below). During that period rent had been levied at the rate of £1250 per calendar month payable in advance on 8<sup>th</sup> of each month until 1 January 2019. The balance showing as at 1 January 2019 was £8750.00 in arrears.
4. On 30 November 2018 the Application was referred to a tribunal.
5. On 28 December 2018 the tribunal notified parties that the Application had been referred to a tribunal and that a Case Management Discussion had been fixed for 18 January 2019 at 14.00h. The Respondents were invited to submit written representations in response to the Application by 15 January 2019.
6. The Respondents did not submit any written representations within the stipulated period.

### **Case Management Discussion – 18 January 2019 at 1400h at 2<sup>nd</sup> Floor, Riverside House, 502 Gorgie Road, Edinburgh**

7. Mr Gardiner from the Applicant’s Representative attended the CMD on behalf of the Applicant, accompanied by Kendall Allan.

8. The other attendees on behalf of the Applicant who observed the hearing were Catherine Irving, Jamie Kerr and Lena Cowan from Ben Property, Letting Agency.
9. The Respondents did not attend the CMD and made no contact with the tribunal's administration or venue.
10. Mr Gardiner lodged an updated written submission dated 15 January 2019 in respect of this Application and the related payment action together with 3 productions: (1) and (2) are updated rent statements to 8 January 2019 and (3) confirmation from the letting agent that the Respondents have never advised them of any payments which they have made which are not showing on the account and there are no unallocated payments sitting which could have been made by them. The tribunal Chair confirmed with the tribunal Clerk that the submission and productions were received by the tribunal's administration on 15 January 2019 and sent to the Respondents by mail on 16 January 2019.
11. The tribunal noted that the Private Residential Tenancy was signed on behalf of the letting agent on 8 June 2018. It appeared to have been signed by the First Respondent, Mr William Macintyre on 14 June 2018, although the date of 8 June and initials were noted below the signing box. It appears to have been signed below the signing box by the Second Respondent, Natasha Hope, on 8 or 14 June 2018. The tribunal Chair asked Mr Gardiner if he could explain the signing issue and he discussed the matter with the representatives of the letting agent who were in attendance at the CMD. He advised that the lease was signed by Alexandra Betteridge from the letting agent on 8 June 2018, which was the day that the Respondents were due to come into the office to sign and collect the keys. They did not come into the office until 14 June 2018, on which date both Respondents signed the agreement in the office. The Respondents may have added the date of 8 June 2018 next to 14 June 2018 as that was the start date of the tenancy, but it was signed by both of them on 14 June 2018. They also initialled the other pages of the agreement.
12. The start date for the tenancy was 8 June 2018. The rent payable is £1250.00 per calendar month payable monthly in advance on the date of entry and thereafter on or before 8<sup>th</sup> of each month.
13. Mr Gardiner referred to the updated rental statements (Applicant's documents (1) and (2)) confirmed that the rent has remained at £1250.00 per calendar month from 8 June 2018 to date. No payments have been made subsequent to the payment of £1250.00 due on 8 June 2018 which was paid by the Respondents on 14 June 2018. Reference was made to Applicant's Document (3) confirming that there are no unallocated payments with the

letting agent. The unpaid rent outstanding as at 18 January 2019, including the payment of £1250.00 which was due to be made on 8 January 2019, is £8750.00.

14. Mr Gardiner amended the Application to increase the sum sought to £8750.00 on the basis that the proposed amendment had been notified in advance to the Respondents, that they were aware of the rent arrears to date; they had not submitted any written representations as invited to do; and that in the circumstances there was no prejudice to them in allowing the Application to be so amended. The tribunal Chair confirmed with the Clerk that the tribunal's administration had sent the Applicant's Representative's submissions to the Applicant on 16 January 2019 and allowed the amendment.
15. On the basis of the above Mr Gardiner sought a payment order for the sum of £8750.00.
16. The tribunal Chair stated that a decision had been made today and that an order for payment. The Applicant's representative confirmed that he and the Applicant were aware that as the tribunal made the decision to make an order for possession in the absence of the Respondents, the Respondents could make an application for recall in terms of Rule 30 of the 2017 Rules within 14 days of the decision, which would prevent any further action being taken by any other party to enforce the decision for which recall is sought until the application is determined by the tribunal under Rule 30(9).
17. The Applicant's representative made an Application for interest. The tribunal Chair stated that the tribunal presently had no power in terms of the 2017 Rules to award interest.
18. The CMD concluded.

### **Findings-in-Fact**

- 1.1. There is a private residential tenancy between the Applicant and the Respondent which began on 8 June 2018.
- 1.2. Rent is due at the rate of £1250 per calendar month from 8 June 2018 to 8 January 2019, payable in advance on 8<sup>th</sup> of each month.
- 1.3. As at 18 January 2019 there were £8750.00 of rent arrears due by the Respondents to the Applicant.

## **Decision**

19. 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 sum sought. The tribunal determined that an Order for Payment should be made in respect of the revised sum of £8750.00 sought on behalf of the Applicant.

## **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 Tanner

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

**18 January 2019**