

**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 Section 14 of the Housing (Scotland)  
Act 2016**

**Chamber Ref: FTS/HPC/CV/18/2248**

**Re: Property at 80 Meadow Crescent, New Elgin, Moray, IV30 6ER (“the  
Property”)**

**Parties:**

**Mr Lee Conway, 5 Millersgate, Sibsey, Boston, Lincolnshire, PE22 0TP (“the  
Applicant”)**

**Mr Przemyslaw Fraczak, 80 Meadow Crescent, New Elgin, Moray, IV30 6ER  
 (“the Respondent”)**

**Tribunal Members:**

**Helen Forbes (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 against the Respondent in the  
sum of £8152.00 should be granted in favour of the Applicant**

**Background**

This is a Rule 70 application for a payment order in respect of rent arrears. At a previous Case Management Discussion on 13<sup>th</sup> December 2018 the case was continued to allow it to call at the same time as an application for possession of the Property. At that time, a Notice to Quit had been served on the Respondent but a further application for possession had not been made.

**Case Management Discussion**

The case called for a further Case Management Discussion at the Spectrum Centre, 1 Margaret Street, Inverness, IV1 1LS on Twenty-fifth February 2019. The Applicant was not present and was represented by Ms Erin Wilson, MacLeod and MacCallum,

appearing as a local agent. The Respondent was not present. Service of notification of the Case Management Discussion had been made upon the Respondent by Sheriff Officers on 4<sup>th</sup> February 2019. The Tribunal was, therefore, satisfied that the Respondent was aware of the Case Management Discussion and that, in terms of Rule 29 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules"), the requirements of Rule 24(1) had been complied with and the case could be heard in the absence of the Respondent. The Respondent had not made any written representations to the Tribunal.

Ms Wilson moved for an order to be granted in the sum of £8152.00 which was the total sum of arrears of rent outstanding at 1<sup>st</sup> February 2019. No rent had been paid by the Respondent since the last Case Management Discussion. Ms Wilson did not have any further information on the status of any application made for possession.

The Tribunal member raised an issue in relation to an amendment made by the Applicant's principal agent to increase the sum sought from the original sum of £5,432. The principal agent had lodged an amended rent account statement showing the increase in rent arrears to £8152.00 on 11<sup>th</sup> February 2019, and a written application to increase the sum sought, as required by the Rules, on 19<sup>th</sup> February 2019. In terms of Rule 13, a party may amend their written representations in writing up to seven working days before a hearing or within seven working days prior to the hearing with the consent of the Tribunal. The Tribunal must intimate the amendment on the other party in writing. Ms Wilson did not have instructions to address the Tribunal on whether the Tribunal should exercise its discretion in this matter and allow the late amendment to the application.

The Tribunal adjourned to consider this matter. The Tribunal was aware that both the aforementioned amended rent account statement and the written amendment were intimated by the Tribunal by Recorded Delivery and First Class Post on the Respondent. The Respondent had collected and signed for the letter containing the amended rent account statement on 15<sup>th</sup> February 2019.

The Case Management Discussion reconvened. The Tribunal decided to exercise its discretion and accept the Applicant's amendment. This decision was made bearing in mind the overriding objective and its effect as outlined in Rules 2 and 3. The Tribunal considered that, although the application for amendment was not made within seven working days of the hearing, the Respondent had received notification of the increase in rent arrears on 15<sup>th</sup> February 2019, an increase that he could not fail to be aware of, by virtue of the fact that he had failed to pay the rent. Furthermore, the Tribunal had intimated the written application of 19<sup>th</sup> February 2019 upon the Respondent by First Class Post. The Tribunal considered that it was likely that the Respondent had received this letter, even if he had not yet collected the Recorded Delivery letter of that date. In all the circumstances, the Tribunal considered that the Respondent was not prejudiced by the late written amendment, and the Tribunal decided to exercise its power under the Rules to allow the late amendment, in order to deal with the proceedings justly and to avoid delay in the proper consideration of the issues before it.

## **Findings in Fact**

- (i) There is a short assured tenancy agreement in respect of the Property between the parties dated 1<sup>st</sup> January 2017.
- (ii) The monthly rent for the Property is £450.
- (iii) On or around 1<sup>st</sup> April 2017, the Respondent got into arrears in respect of rent lawfully due to the Applicant.
- (iv) Rent lawfully due to the Applicant by the Respondent in the sum of £8152.00 is outstanding.

## **Reasons for Decision**

The sum of £8152.00 is outstanding. The Respondent has failed to make payment of rent lawfully due to the Applicant.

## **Decision**

An order for payment against the Respondent in the sum of £8152.00 is granted in favour 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.**

Helen Forbes

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**Legal Member/Chair**

**25<sup>th</sup> February 2019**  
**Date**