



**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/20/1165**

**Re: Property at 13 Summerhill Terrace, Aberdeen, AB15 6HE (“the Property”)**

**Parties:**

**Mrs Carol Devine, Ocean View, 33 Robert Street, Stonehaven, Kincardineshire,  
AB39 2DJ (“the Applicant”)**

**Mr Kenny Viroshan Atputharajah, Mrs Debora Viroshan, both formerly residing  
at 13 Summerhill Terrace, Aberdeen, AB15 6HE, and whose present  
whereabouts are unknown (“the Respondents”)**

**Tribunal Members:**

**Neil Kinnear (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that**

**Background**

This is an application for a payment order dated 11<sup>th</sup> May 2020 and brought in terms of Rule 70 (Application for civil proceedings in relation to an assured tenancy under the 1988 Act) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant originally sought payment of arrears in rental payments totalling £4,970.00 as at the date of the application in relation to the Property from the Respondents, and provided with her application copies of a short assured tenancy agreement and a rent arrears statement.

The Applicant subsequently on 5<sup>th</sup> June 2020 advised the Tribunal by e-mail that rent arrears as at 31<sup>st</sup> May 2020 totalled £4,225.00, and provided an updated rent arrears statement.

The short assured tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

Service was validly effected by advertisement in terms of Rule 6A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, and the Tribunal was provided with the Certificate of Service by advertisement.

### **Case Management Discussion**

A Case Management Discussion was held at 14.00 on 18<sup>th</sup> September 2020 by Tele-Conference. The Applicant participated, and was not represented. The Respondents did not participate, nor were they represented. The Respondents have not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant confirmed that the Respondents had quit the Property on 23<sup>rd</sup> May 2020, and that the updated rent arrears statement provided by her on 5<sup>th</sup> June 2020 calculated rent arrears to the date of the Respondents' departure from the Property.

The Tribunal noted that the tenancy agreement provides for monthly rent of £750.00, but that the updated rent arrears statement showed an increase of the rent with effect from 1<sup>st</sup> February 2018 to £800.00.

The Applicant explained that at the commencement of the lease, she had retained one room in the house for storage. In January 2018, she had agreed with the Respondents that she would allow them to rent that room for an additional rental of £50.00 per month, and the Respondents were very pleased to do that.

Unfortunately, this change to the rental figure had been agreed verbally by telephone call. However, the Applicant offered to take a screenshot from her and her husband's mobile phone of a text conversation on 3<sup>rd</sup> January 2018 where she had agreed to offer the additional room to the Respondents at an extra rent of £50.00 per month.

The Tribunal rose for a short period to allow the Applicant to send the screenshot to it by e-mail, which she duly did, and reconvened.

The screenshot shows a text conversation between the Applicant and the Second Respondent, Mrs Debora Viroshan, where the Applicant offers the additional room for an additional rental of £50.00 on 3<sup>rd</sup> January 2018, and the Second Respondent replies

the following day confirming that she has just paid the monthly rental, and without taking issue with the texts from the day before.

The Applicant confirmed that verbally the Respondents agreed to the increased rent for the additional room, as evidenced by the text screenshots.

The Tribunal was invited by the Applicant with reference to the application and papers to grant an order for payment of the sum of £4,225.00. The Applicant confirmed that the sum sought was the amount of rent arrears outstanding as of today's date.

## **Statement of Reasons**

Section 16 of the *Housing (Scotland) Act 2014* provides as follows:

“16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3) Part 1 of schedule 1 makes minor and consequential amendments.”

Accordingly, the Tribunal has jurisdiction in relation to claims by a landlord (such as the Applicant) for payment of unpaid rental against a tenant (such as the Respondents) under a short assured tenancy such as this.

The Tribunal considered the terms of the short assured tenancy agreement, the updated rent arrears statement, and the Applicant's submissions, and was satisfied that this disclosed an outstanding balance due by the Respondents to the Applicant in respect of rent arrears of £4,225.00. The lease agreement provides that rent of £750.00 per month is payable in advance, which rent was increased to £800.00 per month by agreement between the parties in January 2018 to take effect from 1<sup>st</sup> February 2018.

Accordingly, the Tribunal shall make an order for payment of the sum sought.

## **Decision**

In these circumstances, the Tribunal will make an order for payment by the Respondents to the Applicant of the sum of £4,225.00.

## 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.

18 September 2020

Neil Kinnear  
Legal Member/Chair

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Date