



**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/19/0135

Re: Property at 18D High Street, Inverkeithing, Fife, KY11 1NN (“the Property”)

Parties:

**Mr Douglas Sampson, c/o Morgans, Solicitors, 33 East Port, Dunfermline, Fife,
KY12 7JE (“the Applicant”)**

**Mr Shane Bricknell, 18D High Street, Inverkeithing, Fife, KY11 1NN (“the
Respondent”)**

Tribunal Members:

George Clark (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the application should be granted without a hearing
and made an Order for Payment by the Respondent to the Applicant of the
sum of £1,312.40.**

Background

By application, received by the Tribunal on 16 January 2019, the Applicant sought an Order for Payment of the sum of £575 in respect of unpaid rent lawfully due by the Respondent to the Applicant.

The application was accompanied by copies of a Short Assured Tenancy Agreement between the Parties in respect of the Property, commencing on 4 February 2016 at a rent of £475 per month, and a rental statement showing arrears as at 4 January 2019 of £575.

On 11 February 2019, the Tribunal advised the Parties of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written representations by 28 February 2019.

The Respondent made written representations by e-mail on 27 February 2019. They included copies of e-mail correspondence between the Parties in September 2018, in which the Applicant accepted that he had not noticed one payment coming in and

acknowledged that the rent account was fully paid up as at 17 September 2018. The written representations also included copy bank statements showing payments of rent at £475 down to 3 August 2016 and £450 per month from then until 2 January 2018. There were then three payments of £475 between 1 March and 30 April 2018, a further £450 on 5 June 2018, payments totalling £950 in July 2018 and payments of £475 on 31 August 2018 and 28 September 2018.

The written representations also included a copy of a Short Assured Tenancy Agreement between the Parties, commencing 23 August 2016, but at a monthly rent of £450.

The Case Management Discussion scheduled for 3 March 2019 was postponed to 25 April 2019.

On 16 April 2019, the Applicant's representatives provided the Tribunal with an updated rental statement, which indicated that the rent received in December 2018 had been £100 short, no rent had been paid in January or February 2019 (£950), £687.60 had been received on 4 March 2019, but no rent had been received since then. Applying the rent payments due for February and March 2019 (£950 in total), the arrears stood at £1,312.40. This communication of 16 April 2019 was copied to the Respondent.

Case Management Discussion

A Case Management Discussion was held at The Vine Conference Centre, 131 Garvock Hill, Dunfermline, on the afternoon of 25 April 2019. The Applicant was represented by Mr Russel McPhate of Morgans, Solicitors, Dunfermline. The Respondent was not present or represented.

Mr McPhate told the Tribunal that he was now seeking an Order for Payment of the sum of £1,312.40, as set out in the rental statement sent to the Tribunal on 16 April 2019. He explained that he was aware that a second lease had been signed in August 2016, but understood that the original lease had never been terminated and that, in any event, there was no dispute between the Parties as to the amount of the monthly rent, being £475. The payment of £687.60 received on 27 March 2019 had been in respect of two months' Housing Benefit paid directly to the Applicant.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a hearing, including making a decision. The Tribunal was satisfied that it had before it all the information and documentation it required and that it would determine the application without a hearing.

The Tribunal was satisfied, on the balance of probabilities, that the Respondent accepted that the rent agreed between the parties was £475 per month, as this was the amount that the Respondent had in fact been paying from 1 March 2018, albeit his payment on 5 June 2018 had only been £450. The Respondent had not, in his written representations, contended that the rent should only be £450 per month and it was clear from the e-mail exchanges between the Parties that they were in agreement that the rent was up to date at 17 September 2018, by which time the amount being paid was £475 per month and had been for some six months. Accordingly, the Tribunal accepted that the passing rent was £475 per month and that the amount sought was lawfully due by the Respondent to the Applicant.

Decision

The Tribunal determined that the application should be granted without a hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £1,312.40.

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.



Legal Member/Chair

25 April 2019

Date