

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 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/19/0331

**Re: Property at Flat 2, 11 County Place, Perth, PH2 8EE
 (“the Property”)**

Parties:

**Hillcrest Enterprises Limited, 1 Explorer Road, Dundee, DD2 1EG
 (“the Applicant”)**

**TC Young, Solicitors, Melrose House, 69a George Street, Edinburgh, EH2 2JG
 (“the Applicant’s Representative”)**

**Mr Lee Scott, Flat 2, 11 County Place, Perth, PH2 8EE
 (“the Respondent”)**

Tribunal Members:

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

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent should pay the Applicant the sum of NINE HUNDRED AND SIXTY ONE POUNDS AND FORTY FOUR PENCE (£961.44) STERLING; and made an Order for Payment in respect of the said sum.

STATEMENT OF REASONS

1. Procedural Background

- 1.1. On 31 January 2019 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 Housing (Scotland) Act 1988 (“the 1988 Act”).
- 1.2. In the Application the Applicant sought payment from the Respondent of the sum of £791.20 in respect of rent arrears under the assured tenancy between the parties dated 9 September 2004. The sum was amended on 13 March 2019 (see below).
- 1.3. The Application was accepted for determination by a tribunal on 12 February 2019. Both parties were notified by letters dated 6 March 2019 of the date, time and place of Case Management Discussion (“CMD”) in relation to the Application on 29 March 2019. The Respondent was invited to make written representations in response to the Application by 25 March 2019. Both parties were advised that they were required to attend the CMD. The parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application which may involve making or refusing an eviction order. The parties were also advised that if they do not attend the CMD this will not stop a decision or order being made if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair.
- 1.4. The Application documentation and notice of the date, time and place of the CMD were served on the respondent by Sheriff Officers on 7 March 2019.
- 1.5. On 13 March 2019 the Applicant’s Representative intimated an amendment to the sum claimed to £961.44, in terms of Rule 14A of the 2017 Rules. The Applicant’s Representative gave notice to the Respondent of the amendment on the same date.
- 1.6. The Respondent did not submit any representations or make any contact with the tribunal.

2. CMD: 29 March 2019 at 1000h, Inveralmond Business Centre, Auld Bond Road, Perth, PH1 3FX

- 2.1. The CMD was held in relation to this Application and the conjoined eviction application (EV/19/0329).
- 2.2. Ms Nicola Caldwell from the Applicant's Representative attended the CMDs on behalf of the Applicant.
- 2.3. The Respondent did not attend the CMDs and made no contact with the tribunal's administration or venue. The tribunal was satisfied that the requirements of Rule 24(1) of the 2017 Rules regarding the giving of notice of a hearing had been duly complied with and proceeded with the Application upon the representations of the Applicant's representative and all the material before it, in terms of Rule 29 of the 2017 Rules.
- 2.4. The tribunal noted that the Assured Tenancy was signed on behalf of both parties on 9 September 2004. The Landlord in the tenancy agreement is Gowrie Housing Trust. The Application documentation includes a special resolution showing the change of name to Hillcrest Enterprises Limited dated 28 May 2012. The initial tenancy term was for the period 9 September 2004 to 28 September 2004. Since then the lease has tacitly relocated on a monthly basis. The rent payable in terms of the lease is £270.71 per calendar month payable monthly in advance on the date of entry and thereafter on or before 1st of each month. Clause 5 provides for rent and service charge review in accordance with the Applicant's rental policy, namely once per year with one month's notice.
- 2.5. Proof of rental increases and rent statement to 25 January 2019 had been lodged with the Application documentation. The Applicant's Representative lodged an updated rent statement to 4 March 2019, with the consent of the tribunal, on the basis that it is evidence in relation to the amended sum sought which was notified to the Respondent on 13 March 2019.
- 2.6. The Applicant's Representative stated that the rent increase letters show rent increases from 2009 onwards. The monthly rent from 1 April 2018 has been £426.64 per calendar month. This is reflected on the rent arrears statement.
- 2.7. The updated rent statement dated 12 March 2019 shows the current arrears figure as £961.44.

3. The tribunal makes the following findings-in-fact:

- 3.1. There is an Assured Tenancy between the Applicant (in its previous name of Gowrie Housing Trust) and the Respondent dated 9 September 2004.
- 3.2. The initial tenancy term was for the period 9 September 2004 to 28 September 2004. Since then the lease has tacitly relocated on a monthly basis.
- 3.3. The rent payable in terms of the lease was £270.71 per calendar month payable monthly in advance on the date of entry and thereafter on or before 1st of each month.
- 3.4. Rent has increased in accordance with the tenancy terms and the monthly rental from 1 April 2018 onwards is £426.64.
- 3.5. As at 29 March 2019, the date of the Case Management Discussion, the rent arrears were £961.44.

4. **Decision**

- 4.1. 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 amended sum of £961.44 sought on behalf of the Applicant and made an order for payment by the Respondent to the Applicant for the said sum.

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.

S Tanner

29 March 2019

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