

**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 16 of the Housing (Scotland)  
Act 2014**

**Chamber Ref: FTS/HPC/CV/18/0547**

**Re: Property at 34 Clayhills Drive, Dundee, DD2 1SX ("the Property")**

**Parties:**

**Dr Mahmood Ashour, 21 Song Thrush Drive, Finberry, Ashford, Kent, TN25  
7FP ("the Applicant")**

**Mr Omar Alkalbani, UNKNOWN, UNKNOWN ("the Respondent")**

**Tribunal Members:**

**Lesley Johnston (Legal Member)**

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

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

**Background**

1. By application dated 8 March 2018 submitted to the Tribunal under rule 70 of Schedule 1 to the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ('the Rules') the applicant seeks an order for payment of unpaid rent due in respect of the respondent's tenancy at 34 Clayhills Drive, Dundee, DD2 1SX ('the property').

**Case Management Discussion**

2. A Case Management Discussion took place on 26 June 2019 at 10am at Caledonian House, Dundee in respect of the application.
3. Mr Burness, Martin & Co (the Letting Agents for the property) attended the hearing as the applicant's representative.

4. The respondent was not in attendance.
5. Notice of the hearing was served on the respondent by advertisement as his whereabouts are currently unknown. A certificate of service by advertisement dated 26 June 2019 certified that notice of the hearing was provided by advertisement on the Tribunal's website between 21 May 2019 and 26 June 2019.
6. The Tribunal was satisfied that adequate notice had been given to the respondent and decided to proceed with the hearing in the absence of the respondent in terms of Rule 29.

### **Procedural History**

7. The procedural history of the case is as follows.
8. The application was lodged on 8 March 2018.
9. A Case Management Discussion was fixed for 23 May 2018. On 16 May 2018 the respondent emailed the Tribunal to advise that he could not attend as his wife was due to give birth. In addition, he advised that he had paid the cleaning and damage costs and provided the receipt from Safe Deposits Scotland confirming that the full tenancy deposit had been paid to the applicant in that regard. He requested a monthly repayment opportunity, advised that he had problems with work and efforts to pay. He requested a last chance and advised that he had no intention of escaping from paying "any dues".
10. At the hearing on 23 May 2018, the respondent was not in attendance. The applicant applied to the Tribunal to increase the sum sought in the application from £3,600 to £4,191.78 to take account of arrears due in respect of the period 15 December 2017 to 29 March 2018. The applicant advised the Tribunal that the applicant had vacated the property on 29 March 2018 and prior to the Sheriff Officer's service of notice of the hearing on the respondent. The applicant advised that there was no forwarding address for the respondent. The CMD was therefore continued for a period of 4 months in order that the applicant could attempt to trace the whereabouts of the respondent.
11. By letter dated 3 January 2019 the applicant's agents wrote to the Tribunal and advised that the respondent's whereabouts continued to be unknown.
12. A further CMD was fixed for 26 April 2019. Intimation of the application and the date of the hearing was given to the respondent by advertisement, as the

respondent's whereabouts continued to be unknown. In addition, the respondent was also notified of the hearing by email dated 19 March 2019.

13. The CMD on 26 April 2019 was adjourned as the applicant's representative was unexpectedly unable to attend the hearing. In any event, the respondent did not attend that hearing and no representations were submitted by him or on his behalf.

### **Submissions by the Applicant**

14. Mr Burness asked the Tribunal to grant the application in the sum of £4,191.78. This sum comprised rent arrears for the period 15 December 2017 to 29 March 2018.
15. Mr Burness referred to the lease between the parties dated 15 September 2017, in terms of which the rent was £1,200 per month. In terms of annex 2 to the lease, the respondent had agreed to pay three months' rent in advance together with his deposit at the outset of the tenancy totalling £4,800. The respondent had agreed that the remaining 3 months' rent would be paid, in advance, by 2 October 2017.
16. On 15 September 2017 the respondent paid £4,800 to the applicant. No further payment of rent was received from the respondent.
17. On 2 May 2018 the tenancy deposit had been paid by Safe Deposits Scotland to the applicant. That sum was applied to cleaning costs and compensation. The sum sought by way of £4,191.78 is therefore comprised of rent arrears only.
18. Mr Burness asked that the Tribunal take into account the documentation lodged in support of the application and that the order in the sum of £4,191.78 should be granted.

### **Documents in support of the application**

19. The correspondence lodged with the application showed that payment of the outstanding rent had been demanded by the applicant's representatives.
20. By email dated 27 October the applicant's agents contacted the respondent to ask when he would be paying the remaining 3 months' rent. By email dated 7 November 2017 the respondent advised that payment had been made on 6 November 2017. By email dated 21 November 2017 the applicant's agent informed the respondent that no payment had been received. By email dated 22 November 2017 the applicant's representative chased payment again, and referred to a telephone call between the parties in which the respondent had advised that his account had been frozen but would be making payment that day and providing proof of payment to the applicant. By emails dated 29

November and 8 and 22 December 2017 the applicant's agent emailed the respondent to advise that payment had not been received.

21. The applicant issued formal demand letters to the respondent as follows:

- a. On 19 December 2017 the applicant demanded payment of £1,200 in respect of rent for the period 15 December 2017 to 15 March 2018 and provided a rent statement in that sum;
- b. On 11 January 2018 a further demand letter in the sum of £1,200 was issued by the applicant to the respondent;
- c. By letter dated 19 January 2018 the applicant demanded payment in the sum of £2,400 and a rent statement was enclosed.

22. On 29 January 2018 the applicant's representative emailed the respondent following a telephone call with him in which the respondent had advised that he would be in Dundee on 29 January 2018 and would make payment.

23. By letter dated 30 January 2018 the applicant demanded payment in the sum of £2,400 and again, a rent statement was enclosed.

24. On 16 February 2018 the applicant referred the rent arrears to a debt collection agency ('Redwood Collections').

25. On 12 March 2018 the respondent replied to the debt collection agency, acknowledged that he owed outstanding rent arrears and proposed to make payment in the sum of £3,900 comprising £3,600 of rent and £300 in respect of "10 extra days of rent". In terms of the respondent's proposal, the sum of £3,900 ought to have been paid by 30 April 2018.

26. On 14 March 2018 the respondent's agents spoke to the respondent who advised that he would provide a forwarding address. No forwarding address was received.

27. On 29 March 2018 the respondent removed from the property without leaving a forwarding address. According to the rent statement, the arrears due to 29 March 2018 are in the sum of £4,191.78.

### **Findings in Fact**

1. The parties entered into a short-assured tenancy dated 15 September 2017 in respect of the property;
2. The tenancy commenced on 15 September 2017;
3. The rent due to be paid in respect of the property was £1,200 per month;

4. The parties agreed that the first three months' rent plus the deposit would be paid in advance and the remaining three months' rent would be paid by 2 October 2017;
5. The respondent paid £4,800 on 15 September 2017 in respect of the deposit and three months' rent;
6. The respondent has made no further payments to the applicant;
7. The respondent vacated the property on 29 March 2018;
8. The respondent's whereabouts are unknown;
9. The tenancy deposit in respect of the property was paid to the applicant on 2 May 2018 and applied to cleaning and damage costs in respect of the property;
10. The arrears in respect of the property amount to £4,191.78;
11. The applicant issued demand letters and statements of account to the respondent on 19 December 2017; 11 January 2018; 19 January 2018 and 30 January 2018;
12. The applicant has demanded payment by emails dated 27 October, 21, 22 and 29 November, 8 and 22 December all dates 2017; and 29 January 2018;
13. The respondent acknowledged the existence of the rent arrears by letter dated 12 March 2018 and accompanying form submitted to Redwood Collection;
14. By letter dated 12 March 2018 the respondent offered to pay the sum of £3,900 to the application in instalments, with the last payment to be made by 30 April 2018;
15. The applicant has not received any further correspondence or payment from the respondent.

### **Reasons for Decision**

28. The Tribunal is satisfied that the rent amounting to £4,191.78 is outstanding and is due to be paid by the respondent for the period 15 December 2017 to 29 March 2018 (inclusive).
29. The applicant has issued a number of demands for payment and the respondent has been afforded many opportunities to make payment.
30. In addition, the respondent has acknowledged the existence of the rent arrears in writing and despite offering to pay the sum of £3,900, has failed to make any payment to the applicant towards the arrears.
31. The Tribunal is satisfied, taking account of all the circumstances of the case and the documentation submitted by the applicant in support of the application, that an Order for Payment should be granted in the sum of £4,191.78.

### **Decision**

The Tribunal grants an Order for Payment in the sum of £4,191.78

## 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.

L Johnston

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Legal Member/Chair

26/6/19  
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Date