

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

---



**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (tenancies)(Scotland) Act 2016**

**Chamber Ref: FTS/HPC/EV/18/1863**

**Re: Property at Flat 1/L, 7 Clepington Street, Dundee, DD3 7PU (“the Property”)**

**Parties:**

**Mr Rhys Price, 52 Forres Crescent, Dundee, DD3 0ER (“the Applicant”)**

**Mr Martin Robertson, Flat 1/L, 7 Clepington Street, Dundee, DD3 7PU (“the Respondent”)**

**Tribunal Members:**

**Graham Harding (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for possession of the property and the eviction of the Respondent.**

**Background**

1. By application dated 19 July 2018 the applicant applied to the Tribunal for an order for possession of the property and the eviction of the Respondent on the grounds that the Respondent had rent arrears over three consecutive months and had failed to reply to any communications from the Applicant or his representatives.
2. The Applicant provided the Tribunal with copies of the Tenancy Agreement, the Notice to Leave, letters to the Respondent regarding rent arrears, statement of arrears, Section 11 Notice and letter authorising Westport Property Ltd to act as the Applicant’s representative.
3. By Notice of Acceptance dated 6 August 2018 a legal member of the Tribunal with delegated powers accepted the application and referred the matter to a Case Management Discussion.

4. Intimation of the Case Management Discussion was given to the Respondent by Sheriff Officers on 5 September 2018.

### **Case Management Discussion**

5. A Case Management Discussion was held on 28 September 2018 at Dundee Carers Centre, Seagate House, 132-134 Seagate, Dundee. It was attended by Mr Adam Hutchison of Westport Property Ltd on behalf of the Applicant and by the Respondent and his former partner Ms Suzanne Ness.
6. The Respondent accepted that he had not paid the deposit of £400.00 nor any rent of £400.00 per month since the commencement of the tenancy on 30 April 2018. He explained that there was good reason for withholding rent as the property was not in a liveable condition. The Respondent said that although the property was not in a liveable condition he had been living in it since December 2017.
7. The Respondent said that there were numerous problems with the property namely;-
  - (i) There were no smoke alarms;
  - (ii) there was no hot water in the taps;
  - (iii) there was no cold water in the shower;
  - (iv) there were rodents in the kitchen;
  - (v) there was a hole in the floor in front of the bathroom;
  - (vi) when it rains the electricity trips out;
  - (vii) there was no heating in the rooms;
  - (viii) there was a cracked window;
  - (ix) there was a 2cms gap under the front door;
  - (x) there were no carpets;
  - (xi) the washing machine did not work;
  - (xii) the kitchen windows did not open;
  - (xiii) there was damp in the living room;
  - (xiv) the oven did not work.
8. For the Applicant Mr Hutchison accepted that the property did not meet the Repairing Standard and that the Respondent might have had good grounds for withholding payment of the rent but that the Respondent had not permitted access to the property to allow the Applicants tradesmen to carry out the necessary repairs.
9. The Respondent said that was not correct but that he could only allow access to the property when he was not t work. The Respondent's former partner Ms Ness offered to be present to allow access.
10. The parties agreed that the necessary works could be completed within about one month.
11. The Respondent explained that he had initially kept the funds he was withholding but as time had passed he had spent them and he no longer had

the money to pay the arrears but he would if the repairs were carried out agree to pay the monthly rent plus an additional payment towards the arrears.

12. It was agreed that the total amount currently due including the deposit was £2800.00 with a further £400.00 being due on 30 September. The Respondent did not know how much if anything he could afford to pay towards the arrears over the next month. He accepted that even if he applied for and was granted payment of Housing Benefit it was very unlikely that he would have been able to clear sufficient of the arrears to leave less than three month's rent outstanding in a month's time.
13. For the Applicant Mr Hutchison suggested that if the Case Management Discussion was continued for a month it would simply be delaying the inevitable and the Respondent would still be evicted at the next hearing. In the circumstances it would be better for the order to be granted now and the Respondent would still have time over the next month to find another property before the order came into effect.
14. Ms Ness indicated the Respondent could live with her in the short term.
15. Mr Hutchison indicated that if the order was granted today it was likely that his client would not in the future seek to recover the arrears of rent from the Respondent. He could not guarantee this would be the case.
16. The Tribunal indicated to the parties that it would be prepared to continue the Case Management Discussion to allow the repairs to be carried out and to allow the Respondent to then pay the withheld rent but if the Respondent did not think he would be able to clear the arrears or a very substantial part of them then the Tribunal would with the of the Respondent grant an order for the Respondent's eviction without a continuation.
17. After considering his position the Respondent agreed to an order being granted.

### **Findings in Fact**

18. The parties entered into a Model Private Residential Tenancy Agreement commencing on 30 April 2018.
19. The Respondent has paid no rent since the commencement of the tenancy nor has he paid the deposit of £400.00.
20. The current amount due to be paid by the Respondent to the Applicant is £2800.00 including the deposit with a further £400.00 due on 30 September.
21. The Respondent is in paid employment. He may be entitled to some Housing Benefit. He has not applied for Housing Benefit.

22. The property does not meet the repairing standard. The Respondent was entitled to withhold the payment of rent until the Applicant brought the property up to the repairing standard.

23. The Respondent did not keep the funds withheld but has spent them. He is not in a financial position to clear the arrears of rent once the repairs to the property have been carried out.

24. The Respondent has consented to an order for eviction passing against him.

### **Reasons for Decision**

25. Although the Tribunal would have been prepared to continue the Case Management Discussion for a period to allow the Applicant to gain entry to the property to carry out the necessary repairs and thus allow the Respondent to then release the rent payments that had been withheld it transpired that the Respondent had in fact spent the withheld funds and would not be in a position as far as the Tribunal could ascertain to make any substantial inroads into the very large amount of arrears of rent that had accrued.

26. After giving the matter some thought the Respondent accepted that he would not be able to clear the arrears and as it had been indicated by the Applicant's representative that it was unlikely that the Applicant would pursue the Respondent for any arrears of rent the Respondent decided to consent to an order for eviction passing against him.

27. As there was six month's rent outstanding at the date of the hearing the Applicant was entitled to the order sought.

### **Decision**

28. The Applicant is entitled to an order against the Respondent for possession of the property and the Respondent's eviction from the property.

### **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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland

(Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

Graham Harding

Legal Member/Chair

Date

28 September 2018