

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

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**Decision 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/19/1928**

**Re: Property at 114 Harrison Avenue, Dundee (“the Property”)**

**Parties:**

**Mr Ian Falconer, 8a, West Grove Avenue, Dundee, DD2 1JN (“the Applicant”)**

**Ms Frances Beattie, 114 Harrison Avenue, Dundee (“the Respondent”)**

**Tribunal Members:**

**Petra Hennig-McFatridge (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to payment by the Respondent of £3,186.45**

The Applicant is seeking an order for payment of rent arrears for the property. An application in terms of Rule 70 (Civil Proceedings) was received by the Tribunal on 20 June 2019. A copy rental agreement and a rent statement were submitted with the application.

The Tribunal fixed a Case Management Discussion (CMD) for 16 September 2019. Mr Alec Campbell from Lara Letting attended on behalf of the Applicant. Mr Peter Kinghorn from Dundee North Law Centre appeared on behalf of the Respondent.

The Applicant’s Representatives lodged an updated rental statement at the CMD showing outstanding arrears of £3,186.45.

**Submissions at the Case Management Discussion:**

The Applicant’s Representative at the CMD asked for an order for payment for the sum of £3,186.45 and explained the updated calculation of outstanding arrears took

into account a substantial back payment of Housing Benefit. It was his understanding that the Respondent had been rehoused by Dundee City Council.

Mr Kinghorn initially stated that the arrears amount was disputed. He stated that the Respondent had been entitled to a £100 reduction for an item of white goods, that the Respondent considers that the deposit had not been lodged within the required period and thus that the Respondent would be entitled to raise an application with the Tribunal under the Tenancy Deposit Regulations and that there had been a car parked in front of the propriety for almost a year and thus the Respondent had not had full enjoyment of the property. He further confirmed that there are no Housing Benefit payments outstanding and that the arrears arose mainly through a difference in Housing Benefit due for the property and the monthly rent.

Mr Campbell showed the reduction of £100 was captured in the rent statement under the entry of 1 May 2016. He further stated he had no knowledge of the alleged late payment of the deposit but could confirm that the deposit of £500 was shown as paid in the rent statement on 1 April 2016. He was not aware of the matter of the car having been raised by the tenant. There had to his knowledge not been any formal complaint. He also pointed out that the Council would have uplifted such an item if left there for that long under the legislation regarding waste disposal if the Respondent had reported the matter.

Following a discussion of the above Mr Kinghorn accepted that the £100 sum had been taken into account in the updated calculation, that he was unable to give any details regarding the issue with the car and in particular was not able to confirm how and when this would have been formally reported to the landlord by the Respondent and accepted that the matter of the application to the Tribunal under the Tenancy Deposit Regulations would be a matter that would have to be dealt with separately if and when such an application would be made by the Respondent and was not part of the current proceedings. In light of this he agreed that the application should proceed as unopposed.

#### **Findings in Fact:**

- 1. The Applicant and the Respondents entered into a Tenancy Agreement on 1 April 2016 with an initial end date on 31 March 2017.**
- 2. In terms of the Agreement rent of £500 is due in advance every calendar month.**
- 3. The total shortfall of rent as at 16 September 2019 is £3,186.45**
- 4. This takes into account all Housing Benefit payments due for the property and the £100 reduction at the start of the tenancy for a bath.**

#### **Reasons for the Decision:**

The Tribunal considered that the facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

(d) discussing what witnesses, documents and other evidence will be required;

(e) discussing whether or not a hearing is required; and

(f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Power to determine the proceedings without a hearing

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

The documents lodged are referred to for their terms and held to be incorporated herein.

The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case.

The Tribunal makes the decision on the basis of the written evidence lodged by the Applicant and the information given at the CMD by the Applicant's representative and the Respondent's representative.

The facts of the case are not disputed.

The rent outstanding up to and including 16 September 2019 based on the amounts paid as per the schedule lodged and the rent charge is £3,186.45. There was no valid defence to the action stated. It is not in dispute that the sum of arrears is due by the Respondent to the Applicant for said period.

The Applicant is entitled to payment of the sum of £3,186.45 for outstanding rent arrears.

## 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.

Petra Hennig-McFatrige

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Legal Member/Chair

16.9.19  
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Date