



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 (“the 2014 Act”) and Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/CV/18/3125

**Re: Property at 61 St Fillans Road, St Mary's, Dundee, DD3 9JE
 (“the Property”)**

Parties:

**Mr Lee Brown and Mrs Janette Brown, 309 Strathmartine Road, Dundee
 (“the Applicants”)**

**Gilmartin, Findlay and Macrae, 13 Cowgate, Dundee, DD1 2HS
 (“the Applicants’ Representative”)**

**Ms Charley Duggan, 61 St Fillans Road, St Mary's, Dundee, DD3 9JE
 (“the Respondent”)**

Tribunal Members:

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

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined that the Respondent should pay to the Applicant the sum of FIVE THOUSAND AND FORTY THREE POUNDS AND NINE PENCE (£5043.09) STERLING; and made an Order for Payment in respect of the said sum.

authority to act on behalf of her husband but said that she would ask him to send an email confirming that he was content for her to represent him at the CMD in this and the related eviction application.

- 1.4. The Respondent did not attend and made no contact with the tribunal. The tribunal was satisfied that the requirements of rule 24(1) of the 2017 Rules have been duly complied with and proceeded upon the representations of the Second Applicant and all the material before it, in terms of Rule 29 of the 2017 Rules.
- 1.5. The Second Applicant stated that she did not know the reasons why the Case Management Discussions had been adjourned until today and that her solicitor had not provided the Notes of the previous Case Management Discussions in this and the related eviction application. She said that her solicitor had given her a summary of the last Case Management Discussions but had not told her that in the eviction action, there was a list of legal matters to be addressed today with reference to legal authorities.
- 1.6. The tribunal arranged for the Second Applicant to be provided with copies of the Notes of the two Case Management Discussions and spent some time making sure that she understood what the tribunal had anticipated being addressed on today. The tribunal chair stated that she understood that the Second Applicant was not legally represented and would consider any application she wanted to make to adjourn the CMD in order to seek advice.
- 1.7. The Second Applicant stated that she thought that there were other points that she could advise the tribunal about which may stop the whole proceedings. The Second Applicant advised that she believes that the Respondent has been allocated a council property. The Respondent told her on the telephone yesterday (11 March 2019). The Respondent did not tell her when she will get access to the council property. The Second Applicant stated that she still wants her property back and she still wants to recover the rent arrears. She stated that she still wants the eviction action to continue.
- 1.8. The tribunal chair stated that the Applicants should have been in a position today to deal with the issues raised by the Legal Member at the last CMD and repeated the suggestion that one option would be to adjourn the CMDs. The Second Applicant replied by stating that she did not want any more dates. The Second Applicant stated that she is not legally qualified and was out of her depth. She picked up her telephone to use it within the tribunal room to contact her solicitor. The tribunal Chair adjourned the CMDs at 1425h in order that she could go to a private room and telephone her solicitor. The Second Applicant returned shortly afterwards requesting

another adjournment until her solicitor could arrive from his office nearby to represent her. The tribunal agreed to a further short adjournment.

1.9. Shortly afterwards, Mr Ian Macrae, Solicitor, from the Applicants' Representative arrived at the venue and was given the opportunity to consult with the Second Applicant before coming into the hearing room with the Second Applicant. They indicated to the tribunal staff when they were ready to re-commence the CMDs.

1.10. At 1440h the CMD recommenced. Mr Macrae stated that he had a vague idea what is happening as far as today is concerned. He confirmed that he is acting for both the Applicants. The tribunal chair summarised what had been discussed with the Second Applicant prior to his arrival.

1.11. Mr Macrae confirmed that there has been no application to amend the sum sought in the CV case. It is intended that a second application will be raised for the balance of the rent arrears in due course. He moved for the tribunal to make the order for payment of the arrears as applied for, in the sum of £5043.09. He referred to the Short Assured Tenancy Agreement dated 20 July 2017 and the rent statement for the period to 11 November 2018.

1.12. The Second Applicant explained that with reference to the rent statement, that she had calculated the annual rent at £700 per calendar month and then divided it into four weekly payments to assist the Respondent with receipt of payments of Housing Benefit. The Respondent did not apply for Housing Benefit after June 2018. The payments were made directly to the Second Applicant's account. The Respondent was expected to top up the housing benefit payments. The Respondent was meant to pay in advance for each four week period. The arrangement was entered into by agreement to assist the tenancy with aligning rent and housing benefit. The last housing benefit payment received was on 4 February 2018.

1.13. Mr Macrae submitted that the rent statement shows that the difference in the rent due and the rent paid for the period to 11 November 2018 is £4999.89, to which was added £43.20 which had to be paid back to Housing Benefit, giving the sum sought of £5043.09.

1.14. He confirmed that the next application would be made for the period from 12 November 2018 until the end of the tenancy.

1.15. The Second Applicant confirmed that she had sent the rent statement to the Respondent and that it had also been provided to the Council. It is

included with the Application paperwork which was served on the Respondent.

1.16. Mr Macrae explained his position in relation to the related eviction Application and the discussion is included in the Notes of a Case management Discussion of today's date.

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

3.1. The Applicants are the proprietors of the Property.

3.2. There is a tenancy between the Applicants and the Respondents for the Property dated 20 July 2017.

3.3. The start date for the tenancy was 1 August 2017.

3.4. The tenancy is continuing.

3.5. The rent payable is £700.00 per calendar month, payable monthly in advance on the date of entry and thereafter on or before 1st of each month. By agreement the rent due is calculated on a four weekly basis to coincide with the Respondent's payments of Housing Benefit.

3.6. As at 11 November 2018, the Respondent was in arrears of rent of £4999.89.

3.7. The Applicants had to make a repayment of Housing Benefit to the council in the sum of £43.20.

3.8. The total rent arrears for the period to 11 November 2018, including the said repayment of housing benefit, are £5043.09.

4. Payment Order

4.1. The tribunal was satisfied on the basis of the Application and documentation lodged and the parties' written and oral representations that a payment order in the sum of £5043.09 should be made against both Respondents in respect of rent arrears up to 11 November 2018.

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.

Susanne L M Tanner

12 March 2019

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