



**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 and Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)**

**Chamber Ref: FTS/HPC/CV/18/3507**

**Re: Property at Flat 1, 84 High Street, Ayr, KA7 1PQ (“the Property”)**

**Parties:**

**Mr David Cowan, Mrs Marena Cowan, C/O Key-Lets, 12 Parkhouse Street, Ayr, KA7 2HH (“the Applicant”)**

**Mr Thomas Butler, Flat 1, 84 High Street, Ayr, KA7 1PQ (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order in favour of the Applicant against the Respondent for payment should be made.**

**Background**

1. By application lodged on 24 December 2018, the Applicant applied to the Tribunal for a payment order against the Respondent in the sum of £1,050 in respect of unpaid rent for the Property. Supporting documentation was lodged. The application was submitted on behalf of the Applicant by Mr Timothy Williamson of Key-Lets (“the Applicant’s representative”).
2. On 18 January 2019, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of the application in terms of Rule 9 of the Regulations.
3. On 13 February 2019, a copy of the application was served on the Respondent by Sheriff Officer, together with details of the Case Management Discussion to be held in respect of the case. The Respondent was informed

that written representations were to be lodged by 28 February 2018. No written representations were submitted to the Tribunal by the Respondent.

4. On 22 February 2019, the Applicant's representative submitted to the Tribunal an email attaching an updated rent statement and confirming that the rent arrears had reduced and that the amount now sought in terms of the application was £700. The Respondent was notified of this.
5. On 5 March 2019, the Applicant's representative copied in the Tribunal to email correspondence from him to the Respondent dated 5 March 2019, to which he had attached the updated rent statement and what purported to be the Respondent's bank statements.

### **Case Management Discussion**

6. The scheduled Case Management Discussion ("CMD") took place on 6 March 2019 at 10am at Russell House, King Street, Ayr, KA8 0BQ. The Applicant's representative was in attendance. The Respondent was not. The Tribunal delayed the start of the CMD until 10.10am to allow for late arrival by the Respondent but he did not attend.
7. The Applicant's representative addressed the application and answered questions from the Tribunal. He confirmed that the Applicant was still seeking a payment order for £700 against the Respondent in respect of unpaid rent. He advised that the Respondent did not have high earnings and that he had been a tenant for a number of years and the Applicant had hoped that the rent arrears issue would be resolved before the CMD. He advised that the Respondent's payments had always been erratic in that they were made by him in person at the offices of the Applicant's representative, were not made on the same day of each month and some payments had been missed. He made reference to the updated rent statement lodged. The Applicant's representative stated that the rent payments for April and October 2018 were missed. The monthly rent payments are £350. He confirmed that no further payments have been made since the £350 on 12 February 2019 shown on the rent statement. From previous discussions with the Respondent, the Applicant's representative thinks that the Respondent does not consider that there are arrears due as the Respondent says that he has paid the April 2018 monthly rental payment and that he is entitled to withhold the October 2018 rental payment in respect of repairs issues. The Applicant's representative does not agree. He explained that the payment the Respondent had made in April 2018 was in respect of the March 2018 rent and that, although the Respondent had raised repairs issues and the Applicant had agreed to carry out certain works, the Respondent would not then facilitate access to allow the works to be done. The Applicant's representative advised that the Respondent had frequently been asked to produce his bank statements as proof that other payments had been made but that he has only recently done so. The Applicant's representative advised that he had cross-checked the bank statements with the rent statement and confirmed that the rent statement is correct and that the sum owing in respect of unpaid rent is £700.

The Tribunal noted that the bank statements submitted via the Respondent's representative on 5 March 2019 purported to be the bank statements of the Respondent and show several payments of £350 being made to Key Lets Accommodation Ayr, the name of the bank account holder does not appear on the statements and much other information has been blacked out. As the Respondent had not submitted the bank statements to the Tribunal and was not in attendance at the CMD to comment on them, the Tribunal disregarded same. The Applicant's representative has had ongoing contact with the Respondent and advised that he had spoken to him on 5 March 2019 when he confirmed that he had informed the Respondent that it was still the Applicant's position that the sum of £700 is owing and that the Respondent should attend the CMD. The Applicant's agent confirmed that there has been no offer to pay made by the Respondent. He also confirmed that no application for eviction has been made.

### **Finding in fact**

8. The Applicant is the landlord of the Property and the Respondent is the tenant.
9. The Property is let to the Respondent in terms of a Short Assured Tenancy Agreement, which commenced on 7 October 2016. The tenancy is ongoing and the Respondent still resides in the Property.
10. The rent in terms of the lease is £350 per calendar month.
11. During the tenancy, the Respondent has incurred rent arrears, with £700 being the amount currently due and resting owing in unpaid rent.
12. The sum of £700 has not been paid by the Respondent.

### **Reasons for Decision**

13. The Respondent did not submit any written representations to the Tribunal and did not attend the CMD, having been properly and timeously notified of same. The Tribunal was satisfied from the information contained in the application and supporting documentation, together with the oral submissions made by the Applicant's representative at the CMD that the sum of £700 claimed in respect of unpaid rent is due and resting owing by the Respondent.
14. Although it appears from the information provided by the Applicant's representative that the Respondent does not agree with the Applicant's position, the Respondent has not entered into the Tribunal process or attended the CMD to provide any contrary information. Accordingly, the Tribunal concludes that the case does not require to be continued to an evidential hearing and that an order for payment in the sum of £700 should be made.

## **Decision**

15. The Tribunal accordingly determines that an order for payment by the Respondent to the Applicant in the sum of £700 should be made.

## **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.**

Nicola Weir

**Legal Member**

**Date: 6 March 2019**