

**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 71 of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/20/0641**

**Re: Property at Flat 10, 200 Perth Road, Dundee, DD1 4JY (“the Property”)**

**Parties:**

**Mr Paul Letley, Flat 6, The Clocktower, Dundee, DD1 3JW (“the Applicant”)**

**Mr Roderick McKay, Flat 10, 200 Perth Road, Dundee, DD1 4JY (“the Respondent”)**

**Tribunal Members:**

**Richard Mill (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent should be ordered to pay the sum of TWO THOUSAND FIVE HUNDRED AND THIRTY POUNDS AND FIFTY PENCE (£2,530.50) to the Applicant.**

**Case Management Discussion**

A Case Management Discussion (CMD) took place by teleconference on 31 July 2020 at 2pm. The Applicant, Mr Paul Letley, represented himself. The Respondent, Mr Roderick McKay, did not participate in the Tribunal CMD.

Service of the application and notification of the CMD to take place on 31 July 2020 at 2pm was made upon the Respondent by Sheriff Officer delivery on 24 June 2020. He lodged two handwritten letters which are dated 8 and 28 July 2020 thereafter.

The Tribunal was satisfied that the Respondent was aware of the teleconference CMD on 31 July and had chosen not to participate. There were no barriers to his participation.

## **Tribunal Findings and Reasons**

The Property is Flat 10, 200 Perth Road, Dundee DD1 4JY.

The Applicant is the former landlord of the Property. The Respondent is the former tenant under the relevant lease. He commenced renting the Property in September 2013. The lease continued. In September 2018 a fresh short assured tenancy agreement was entered into fixing the rent at £415 per calendar month. A deposit of £470 was paid.

The application is under Rule 70 and seeks a civil order for payment arising from an assured tenancy. This relates to arrears of rent and other charges.

The last rent payment was paid on 1 March 2019. The Respondent does not dispute this. The lease arrangement came to an end on 7 November 2019 which coincided with the Respondent purchasing the property. He did not pay rent for the full 7 months from April to October 2019 inclusive, and the part month of November prior to his purchase of the Property. This totals the sum of £3000.50.

The Applicant is entitled to recover the arrears of rent. The Respondent was under a legal duty and obligation to make payment of the sums under the lease entered into.

The Applicant advised that the original deposit paid in the sum of £470 has been retained as payment towards the sums due. Once the deposit is applied the sum due reduces to £2,530.50.

The Applicant also sought an additional sum of £480 in late payment charges. Provision is made for these under the lease. The Tribunal expressed concerns to the Applicant that the nature of these charges may amount to unfair terms given the apparently punitive nature of them. The Applicant advised that he had previously undertaken to the Respondent that he would not insist upon these charges and in the circumstances indicated a willingness to reduce the sum sought for to the level of the rent arrears only.

The Respondent's written representations raise issues which are of interest but which have no direct legal impact upon the sum which he is under a legal obligation to pay. He relies upon the fact that his title obtained in respect of the Property is defective. The missives entered into for the purchase will make provision for a remedy to the Applicant. The Respondent's solicitor had a responsibility to protect him. The Applicant stated at the CMD that this assertion is incorrect. The Respondent's concerns relate to a deed of conditions. His explanation was found to be credible. In any event the Respondent cannot counterclaim in respect of such a matter before the First-tier Tribunal. The Respondent also relies upon his ill health which is understood and unfortunate. This factor does not extinguish the Respondent's obligation to pay his contractual rent and other charges. The Respondent also stated in his written submissions that he had been advised that he had not required to pay rent after 1 March 2019 on the basis that he was purchasing

the Property on 31 March 2019. The Applicant explained that this had been the original anticipated date of entry for the purposes of the Respondent's purchase of the Property but that the date was delayed and it had always been clear that rent was payable throughout the period that the lease remained operative and the Applicant owned the Property. This explanation is credible and accepted. This must be the case. The Respondent does not rely upon the lease being terminated early. He accepts having purchased the Property in November 2019.

The Respondent does not rely upon any legal defence to the arrears of rent due. This is the sum of £2,530.50. The Applicant is entitled to an order for payment in this sum.

### **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.**

**Richard Mill**

**Date 31 July 2020**

**Legal Member/Chair**

\*Insert or Delete as required