



**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**

Chamber Ref: FTS/HPC/CV/19/2850

Re: Property at 25 Barrie Path, Glenrothes, KY6 1EA (“the Property”)

Parties:

Mrs Margaret Morton, 24 Laichpark Place, Edinburgh, EH14 1UN (“the Applicant”)

Mr Dominic Harrison, 25 Barrie Path, Glenrothes, KY6 1EA (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Chair and Legal Member)

Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment is granted to the amount of £2086.43 (TWO THOUSAND AND EIGHTY SIX POUNDS AND FORTY THREE PENCE).

Background

1. An application was received by the Housing and Property Chamber on 11th September 2019. It was dated 6th September 2019. The application was submitted under Rule 70 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on an outstanding amount of unpaid rent totalling £2086.43.
2. The application included:-
 - a. Application dated 6th September 2019 received by the Housing and Property Chamber on 11th September 2019.
 - b. Short Assured Tenancy Agreement signed 11th September 2015. This was a continuation of previous leases.
 - c. Form AT5 signed by the parties on 3rd September 2015.

- d. Notice to Quit dated 25th June 2019 with sheriff officer certificate of citation dated 26th June 2019 served personally upon the Respondent.
 - e. AT6 dated 25th June 2019 raising grounds 8, 11 and 12 signed by the Applicants' Agent.
 - f. Section 11 Notice noting date of raising proceedings 6th September 2019.
3. The Tribunal also had before it:-
- a. a copy of the title deeds numbered FFE62493.
 - b. Sheriff Officer certificate of citation for documents pertaining to Case Management Discussion ("CMD") on 13th November 2019 at 12pm at Fife Voluntary Action, 16 East Fergus Place, Kirkcaldy KY1 1XT. The certificate is dated 10th October 2019 and issued personally within his dwelling house. The Sheriff Officer being satisfied that the Respondent resided at the Property.
 - c. Notice of Acceptance dated 1st October 2019
4. On 9th October 2019, all parties were written to with the date for the CMD of 13th November 2019 at 12pm at Fife Voluntary Action, 16 East Fergus Place, Kirkcaldy KY1 1XT. The letter also requested all written representations be submitted by 30th October 2019.
5. On 11th November 2019, the Respondent emailed the Housing and Property Chamber to request a postponement to allow further time to complete his submission. The CMD was postponed on this basis.
6. On 21st November 2019, all parties were written to with the date for the CMD of 20th December 2019 at 2pm at Fife Voluntary Action, 16 East Fergus Place, Kirkcaldy KY1 1XT.
7. On 19th December 2019, the Respondent emailed the Housing Property Chamber. The Respondent requested an adjournment on the basis that he required further time to prepare for the hearing on the grounds of section 19 of the Equality Act due to him being Autistic. This included requiring to have a friend present for support. The motion to postpone the hearing was refused.
8. A CMD was held on 20th December 2019. The Applicant was represented by Ms Kimberly Kane of Lyons Davidson Solicitors. The Applicant did not attend. The Respondent was present. The Respondent did not make any representations in advance of the hearing. The Tribunal raised that there had been no sight of the AT6 service by sheriff officers. The Applicant's solicitor motioned for an adjournment. The Respondent also motioned for an adjournment to allow him to complete his written representations and for a friend to attend with him. He stated to the Tribunal that he found the proceedings uncomfortable and overwhelming. The Tribunal encouraged him to seek legal advice and assistance and to get support with his benefits. The

Respondent raised the following issues which were noted by the Tribunal that day-

- a. The issue of whether a Notice to Quit had been served on him in sufficient time.
- b. He indicated that some of the rent was being held "in lien" as he did not feel able to deal with the letting agents who had discriminated against him.
- c. He indicated he wanted to raise the issue that an eviction or possession order would be unlawful as he had suffered discrimination in terms of the Equality Act 2010.
- d. He did not realise he was a tenant under a short assured tenancy and questioned how this had been achieved.
- e. He mentioned a claim for universal credit which would have assisted with his rent payments but indicated that this had not been dealt with properly.
- f. He was currently claiming for Personal Independence Payment and was also to be in receipt of monies from college and that he was a student.

The Respondent told the Tribunal that he had received around £267 from Universal Credit to pay his rent. He was willing to pay this but not to the letting agent. Ms Kane was to contact the Applicant for an alternative means of payment. The Tribunal Chair advised the Respondent that he should make every effort to take advice and seek assistance with the matters he had raised including any benefit claim outstanding, the issues raised by him at the Tribunal and whether any monies he has currently should be applied to payment of this rent at this time. The Tribunal indicated to the Respondent that he should make any representations he wished to put in writing for the next CMD no later than 27th January 2020.

9. On 9th January 2020, the Applicant's solicitor lodged a copy of a letter to the Respondent which detailed the Applicant's bank details.
10. On 10th January 2020 all parties were written to with the date for the Case Management Discussion ("CMD") of 12th February 2020 at 2pm at Fife Action Voluntary Action, 16 East Fergus Place, Kirkcaldy.
11. On 16th January 2020 the Applicant's solicitor lodged a copy of the Sheriff Officers certificate of citation for the Notice to Quit, Section 33 Notice and AT6.
12. On 23rd January 2020 the Respondent contacted the Housing and Property Chamber to indicate that he had nearly completed his submission which was due on 27th January 2020. On the same date a letter was also received from the Applicant's solicitor enclosing a letter to the Respondent which had stated that the previous bank details were incorrect and enclosed the correct details.
13. On 27th January 2020, the Respondent contacted the Housing and Property Chamber requesting an extension to the time allowed to lodge his submission. This was granted with a new submission dated 3rd February 2020.

14. A CMD was held on 12th February 2020. The Applicant was represented by Ms Kimberly Kane of Lyons Davidson Solicitors. The Applicant did not attend. The Respondent was present. The Respondent did not make any representations in advance of the hearing. The Respondent stated that he had not made payments due to confusion over the bank details. Both parties stated they had left each other voicemails regarding it. The Respondent noted that he had hoped his friend, Ms Mercedes Morriss, would be able to attend with him and help him complete his submission but she had been too ill. The Respondent had raised repairs issues. Ms Kane had not known about this but would take instructions from her client about it. Ms Kane noted that the arrears had risen to approximately £4000 and emphasised that the application for eviction was for a mandatory ground. The Tribunal noted that the Respondent had some difficulty in representing himself and that there may be some issues which may reduce the rent due. The Respondent stated that he was now intending to make some payments now that the bank details were clear. The Tribunal gave a verbal direction to the Respondent to lodge all written representations setting out why he considers the Applicant has failed in her obligations as a landlord and all the issues that he considers are relevant to justify his rent being reduced. The Tribunal stated that this must be lodged with the Tribunal at least 14 days prior to the full hearing which was set for 27th March 2020 at 2pm
15. On 25th February 2020, all parties were written to with the date for the Hearing of 27th March 2020 at 2pm at Fife Voluntary Action, 16 East Fergus Place, Kirkcaldy.
16. On 5th March 2020, an email was received from the Applicant's solicitor requesting a postponement and enclosed further representations.
17. On 18th March 2020, all cases were temporarily cancelled due to Covid 19 restrictions.
18. On 4th June 2020, the Applicant's solicitor submitted a copy letter of the correct bank details which had been sent to the Respondent. This included a track and trace print out.
19. On 15th June, an email was received from the Applicant solicitor stating that the Applicant would now be representing herself.
20. On 13th July 2020 all parties were written to with the date for the Hearing of 4th August 2020 by teleconferencing due to Covid 19 restrictions.
21. On 31st July 2020, a postponement request was received from the Respondent's representative and friend, Ms Mercedes Morriss. She was ill and would not be able to participate. She stated also that the Respondent was able to attend appointments with lawyers and doctors and that he has worked hard to learn to grow and adapt. She stated that this case would now need to wait for a face to face hearing. The Applicant's solicitor opposed the postponement as the arrears then amounted to 16 1/3 months arrears namely £6376.43. It also stated that £1500 had been paid to undertake repairs to the shower and

enclosed documentation showing the Electrical Installation Condition Report and gas safety check.

22. On 1st August 2020, an email was received from the Applicant stating that the lease stipulates that any damage must be informed to the Landlord, that she had dealt with the repairs, that the cupboard key is for an old coal cupboard which the landlord has never had, statement of arrears, receipts for shower repair and photos, proof of no rent payments received from the Respondent, letter from letting agent listing complaints, summary of Applicant's outgoings, copy of letting company investigation to complaint raised by the Respondent.
23. On 24th August 2020, a direction was issued to both parties directing all evidence to be lodged no later than close of business on Monday 7th September 2020.
24. On 7th September 2020 the Applicant's solicitor states the arrears were £6766.43. The email included bank statements showing no payments from the Respondent and a list of witnesses for the applicant was submitted.
25. On 7th September 2020, the Respondent emailed to advise that he was Dyslexic and needed a reasonable adjustment in the form of all correspondence being sent to him on pink paper. He raised issues concerning the letting agent (which was beyond the scope of this Tribunal) and this ongoing involvement with a civil law matter in the Sheriff Court. The Respondent stated that he would be at a disadvantage with a telephone hearing. He raised issues under the Human Rights Act 1988 and referenced that Ms Morriss proves that he is telling the truth. He also claimed the statement submitted by the Applicant from the downstairs neighbour was not truthful. He stated that he was educating himself in housing law and noted that he was still working on his full answer. He noted that he could raise an application with the Housing and Property Chamber for issues arising from his tenancy. The Respondent asked for a further postponement of proceedings. The Respondent also attached a statement from Ms Mercedes Morriss supporting his request and a copy of interlocuter from the sheriff court for a civil matter involving the respondent.
26. On 9th September 2020, the parties were written to advising the case had been postponed a further time.
27. On 16th September 2020 pink paper was able to be ordered. There had been some restrictions due to Covid 19.
28. On 24th September 2020 the Tribunal issued a direction detailing all the points that it wanted addressed by the Respondent. This included medical evidence and legal submissions. The letter attached stated that the Tribunal was minded to proceed on the case without a hearing and that written representations were to be lodged within 14 days of receipt of the letter. The Respondent was given

extra time to respond to the direction and making a response to the Applicant's submission. It was noted that a response was to be lodged 21 days from the receipt on the letter which albeit that Respondent had received the submission on or around 8th September 2020. The Applicant was given 14 days to response to documents lodged by the Respondent. The Direction required the following from the Respondent:-

- a) To provide evidence of medical assessment of diagnosis of autism.
- b) To provide evidence, including medical, of what adjustments are reasonable and necessary to allow the progress of the case in connection to the Respondent's diagnosis of autism and to fully detail the proposed adjustments.
- c) To provide evidence of medical assessment of diagnosis of dyslexia.
- d) To provide evidence, including medical evidence, of what adjustments are reasonable and necessary to allow the progress of the case in connection to the Respondent's diagnosis of dyslexia and to fully detail the proposed adjustments.
- e) To provide details of all reasonable adjustments made for the Respondent during the civil case he was involved in by Scottish Courts and Tribunal Service. This is to include notification of such reasonable adjustments by the Scottish Courts and Tribunal Service by letter or email or notification from the Respondent's solicitor advising of such reasonable adjustment and evidence of the correspondence requesting such reasonable adjustments. (redacted as to nature of the civil case)
- f) To provide all evidence showing the Respondent intimating up on the Applicant any repairs required within the property, including access to the locked cupboard. This is to include emails, letters and text message or any other such forum as can be evidenced to the Tribunal.
- g) To provide the legal basis as to why any repairs completed still allow the Respondent to withhold rent payments.
- h) To provide evidence of steps taken to lodge an application with the Housing and Property Chamber raising a repairing standards case regarding the damage to the property. This is to include copy of any application made to the Housing and Property Chamber and other correspondence by letter or email.
- i) To provide full detailed and evidence of financial costs to the Respondent which have arisen from such repairs requiring completion.

- j) To provide full detailed and evidenced costs arising from not having use of the cupboard.
- k) To provide a full legal submission including specific case law and legalisation where appropriate regarding the reasons in law and the legal basis why the alleged required repairs and/or damage to the property has caused the Respondent to fail to make his rent payments and withhold his rent.
- l) To provide full details and evidence of where the rent money is being held including banks statements and interest levels on the bank account.
- m) To provide evidence of notification sent to the Applicant informing her that the rent was to be withheld with reasons given and time this commenced from and until.
- n) To provide details of what proportion of the rent the Respondent considers is due and what he has done to address those payments. This should be evidence with documentation including bank statements showing the payments.
- o) To provide a full reason why the Accessibility Requirements form attached to the FAQs guidance document which was sent on 9th October 2019 which asked for what reasonable adjustment that needed to be required for the hearing was not completed.
- p) To provide submissions as to why the Tribunal should consider an oral hearing for this case or to confirm satisfaction with a hearing on the papers.
- q) To state and provide evidence as to what legal basis the Respondent had to not deal with the letting agent including evidence of any discrimination. Noting that a complaint was not upheld.
- r) To provide evidence of payment of Universal Credit, evidence of any issues with payment of Universal Credit and evidence of any discrimination received when applying for or receiving Universal Credit. To include evidence in the form of emails or letters to and from the DWP regarding any complaint raised about the discrimination.
- s) To provide the legal basis including case law and legislation where appropriate for his assertion that the Notice to Quit has been served on him in sufficient time.
- t) The legal basis why an eviction or possession order would be unlawful as he has suffered discrimination in terms of the Equality Act 2010.

- u) The legal basis as to why the Respondent considers that he is not under a short assured tenancy.
- v) Evidence of payment of Personal Independence Payment including any award letters stating the dates of award and dates of payment.
- w) Reasons why the verbal direction of 12th February 2020 asking for a full submission and direction requiring all documentation to be submitted by 7th September 2020 have not been adhered to.

The said documentation was to be lodged with the Chamber no later than close of business on 19th October 2020.

- 29. On 30th September 2020, a full set of Tribunal papers were sent to the Respondent on pink paper in addition to the correspondence which had been sent so far.
- 30. On 6th October 2020, the Applicant's solicitor lodged a gas safety certificate dated 2nd October 2020.
- 31. On 8th October 2020, the Respondent emailed to state that he could not deal with this matter as he had to deal with a personal matter arising in a civil case in the Sheriff Court. The letter stated that the Respondent had limited access to the internet, that he considered that bias and discrimination were shown to him due to his disabilities by the Housing and Property Chamber as he has not had enough time or support. He raised a further medical issue.
- 32. On 9th October 2020, an affidavit was lodged by the Applicant's solicitor from Ms Jemma Forbes, solicitor, pertaining to the complaint the Respondent had made about the letting agent in 2018. The Applicant's solicitor also lodged a rent statement noting the arrears currently stood at £7156.43.
- 33. 19th October 2020 an email was sent from the Tribunal to both parties to clarify dates that submissions should be made.
- 34. On 31st October 2020, the Respondent emailed to ask for a postponement for completing the direction answers. He opposed the case being heard on the papers. This was outwith the time asked for responses. An extension to the direction had already been given until 2nd November 2020.
- 35. On 2nd November 2020, the Applicant's solicitor objected to a further extension. Noting that ground 8 conditions remained met.

36. On 3rd November 2020 the Applicant lodged a further statement.
37. On 4th November 2020, the Respondent emailed to state that he was working on his response.
38. On 9th November 2020, the Respondent emailed to state that he was working on his response and was waiting on evidence that he had requested from his doctor the day before. At the Respondent's request he was given the details of agencies who may be able to support and help him with the Tribunal process and procedures. The Applicant emailed noting that the outstanding arrears now totalled £7936.43 in arrears.
39. On 10th November 2020, the Applicant's solicitor emailed to state that there had been no medical evidence lodged and that further adjustment should not occur. She also noted that the Respondent had had the opportunity to get legal advice.
40. On 10th November 2020, all parties were written to advising that the Tribunal had provisionally identified 30th November/1st December 2020 as a date to proceed with the hearing on a paper basis. It was also raised to parties that any further documents lodged would be accepted at the Tribunal's discretion.
41. On 10th November 2020, a returned 'not collected' recorded delivery was sent to the Housing and Property Chamber after the Respondent failed to pick up the recorded delivery letter sent to him from the Housing and Property Chamber with all paperwork printed on pink paper.
42. The case was conjoined with case FTS/HPC/EV/19/2849

The Hearing

43. A hearing was held on 30th November 2020 on the papers with only the Tribunal members. This was under rule 24(3) as the Tribunal dispensed with the requirement for a hearing.
44. The Tribunal was minded that it had several issues before it albeit that this was a mandatory case. The Tribunal identified these issues as the following:-
- a. Was there a Short Assured Tenancy?
 - b. Was the Notice to Quit and section 33 Notice served correctly?
 - c. Was the AT6 served correctly and valid?
 - d. Did the Tribunal wish to dispense with the requirement for an AT6 under section 19 of the Housing (Scotland) Act 1988?
 - e. Had the mandatory grounds been met and should an order for eviction be granted?

- f. Were the arrears affected by the claim that the Property needed repairs to be completed and resulted with the rent being withheld?
- g. Should the Tribunal have further postponed the case to allow for the Respondent to lodge a submission?
- h. Were any of the other issues including the complaint against the letting agent relevant?
- i. Had the Respondent been discriminated in terms of the Equality Act 2010 or the Human Rights Act 1998?
- j. Was it appropriate to proceed with the case on the papers?
- k. Was the outstanding amount claimed in the application form due?

45. Was there a Short Assured Tenancy?

The Tribunal was satisfied that there was a Short Assured Tenancy created. The Respondent signed a lease on 3rd September 2015. At clause 12(a) it states that the Tenant accepts that the tenancy is a Short Assured Tenancy and that he has received an AT5. The Respondent signed the AT5 on 3rd September 2020. The Lease also stated the grounds for the recovery of possession by the Landlord. The Tribunal were satisfied that a Short Assured Tenancy had been created.

46. Was the Notice to Quit and section 33 Notice served correctly?

The Notice to Quit and section 33 Notice were both dated 25th June 2019. Both were served by Sheriff Officers on 26th June 2019. In order to comply with section 19 of the 1988 Act the date of removal from the Property would need to be two months from that date. It was not. The removal date was 11th July 2019 which only allowed the notice period to be 16 days. The Tribunal did not consider that the Notice to Quit and section 33 notice were valid.

47. Was the AT6 served correctly?

For the AT6 to be valid under section 19 of the 1988 Act and Assured Tenancies (Forms) (Scotland) Regulations 1988 it must be served with details of the grounds. Grounds 8,11 and 12 were detailed in the application next to a statutory reference. The Tribunal considered the necessity for this to be extrapolated. The Respondent signed the lease, dated 11th September 2015, which stated the full grounds at clause 12. It is reasonable that the Respondent would have read his lease and been aware of the clauses. We did not consider that this made the AT6 invalid as reference had been made to the grounds in the lease. The AT6 was completed by the Applicant's letting agent. Furthermore at the bottom of the page at part 3 it does state brief reasons. In particular that the arrears amount to a minimum of three months rent arrears totalling £1306.43. The Tribunal was satisfied that the AT6 was properly completed. The AT6 was valid in terms of ground 8 as the required notice period is 2 weeks under section 19 of the Housing (Scotland) Act 1988. This was served by Sheriff Officers personally to the Respondent on 26th June 2019. The Tribunal was

satisfied that this service was valid. With regard to grounds 11 and 12 it was then a question if the Tribunal wished to dispense with the requirement for an AT6.

48. Did the Tribunal wish to dispense with the requirement for an AT6 under s19 of the Housing (Scotland) Act 1988?

The Tribunal can dispense with the requirement for the AT6 in any ground except for ground 8. The purpose of the notice is to make the tenant aware of the proceedings in order that he or she can take action and consider their position to best protect the loss of their home. In this case the Respondent was well aware of the first hearing date in November 2019. He has engaged with the legal process and been given extra time on 6 occasions to allow him to submit answers. Since that point the Respondent has submitted many emails to the Housing and Property Chamber regarding his case. However, he has failed to pay his rent at all during the process. The arrears have arisen from £2086.43 at the date of the application to £7936.43 as at 15th November 2020. It is reasonable and equitable to dispense with the need for the AT6 for grounds 11 and 12. Given the level of the arrears it would be greater prejudice to the Applicant than it would be to the Respondent as the Respondent has remained in the Property without paying rent while the Applicant has not received the lawfully due rent.

49. Had the mandatory grounds been met and should an order for eviction be granted? The Respondent has been asked for the basis that he does not owe the arrears. He has had an oral direction and two written directions requiring him to state his case. At the Case Management Discussion on 20th December 2019 he stated that he was in receipt of Universal Credit Housing Element for which he had received £267. He was willing to make that payment. He did not wish to pay the letting agent with whom he had a dispute. He was given the bank details for the Applicant. Albeit that the first details were incorrect he was given the correct details but did not pay. He at the date of application and the date of decision the Respondent has more than 3 months arrears. He has persistently not paid his rent charge.

50. Were the arrears affected by the claim that the Property needed repairs to be completed and resulted with the rent being withheld?

The Respondent raised issues with repairs requiring to be completed in the Property and that he did not have access to a coal cupboard. The Applicant made a statement to the effect that she herself had never had access to the cupboard. It is unclear what proportion of the Property is covered by the coal cupboard. It is unclear how this has reduced his enjoyment of the Property given that this current lease started in 2015 and was a follow on lease. The Respondent failed to provide any proof of the damage to the Property that meant that he felt that he was able to withhold his rent. He did not provide bank statements of the withheld rent and he did not provide notices of his intention to withhold the rent. The Applicant provided invoices and photos of repairs done to the Property. She also provided gas safety certificates and EICRs. The

Respondent noted at one point that he was aware of his right to apply to the Housing and Property Chamber with a repairs case. The Tribunal has not been made aware of any application. As such this point was dismissed as being irrelevant to this case.

51. Should the Tribunal have further postponed the case to allow for the Respondent to lodge a full written submission?

The Respondent has asked for time to lodge a written response on 8 occasions. The first dating back to November 2019. He has received an oral direction and two written directions requiring a response to be submitted. This has not been submitted to the Tribunal. The Tribunal considers it not in the interests of justice to extend the time further as it is prejudicial against the Applicant as the Respondent has not paid any rent charge since June 2019.

52. Were any of the other issues including the complaint against the letting agent relevant?

The Tribunal did not find the Respondent's complaint against the letting agent to be relevant to this decision. The Respondent had been paying his rent but had stopped doing so. He could have resumed payments and had little further to do with the letting agent. At the CMD on 20th December 2019 he did offer to pay the Applicant directly. Though initially given the wrong bank details he was soon after given the correct details but he did not make payments at that point. Given that he continues to not make payments it suggests, on balance, that he has elected not to make the payments for any reason to do with the letting agent.

53. Had the Respondent been discriminated in terms of the Equality Act 2010 or the Human Rights Act 1998?

The Respondent raised this issue with regard to having disabilities. It is not sufficient to simply state the disability but the form of discrimination requires to be shown. The Respondent did not stipulate exactly how he was discriminated against either directly or indirectly which has an effect on this application. This application is on the basis of rent arrears. It is not arising from an issue relating to the Respondent's disabilities. Prior to June 2019 he had been maintaining his rent payments. There was no suggestion that the Respondent required reasonable adjustments to be made by the letting agent. With regard to the Human Rights Act 1988 the Respondent did not give a full detail of why this was an issue. With regard to both Acts the Respondent was required to provide a full legal argument and was offered guidance to help him find assistance from a professional who could assist him. It should also be noted that the Respondent has stated on several occasions that he has been busy with his civil case but has not advised on any reasonable adjustments made or needed. The Respondent states that he has been discriminated during this hearing by not having a face to face hearing. He attended face to face CMDs on 20th December 2019 and 12th February 2020. He motioned for both of these to be

adjourned as he felt he was not able to deal with them. On 18th March 2020 all Housing and Property Hearings were cancelled due to the Covid 19 pandemic. Hearings were then changed to telephone hearings. Since March 2020 there have been no face to face hearings. This is for the safety of all parties involved with the hearing including the Tribunal members and Housing and Property Chamber staff. Since the application was lodged the Respondent has failed to make any payments to his rent. This has meant that the arrears have continued to accrue. The Tribunal has provided several adjournments to allow the Respondent to prepare a full written representation. He was advised on 20th December 2019 by the Tribunal Chair to seek advice and assistance with this matter. The current Tribunal also recommended that this be considered in the letter of 24th September 2020 offering to provide a selection of agencies who may assist him (though not an exhaustive list) if he requested it. On 2nd November 2020 received an email from the Respondent dated 31st October 2020 requesting these details. The Tribunal is an impartial tribunal trying to ensure fairness to both parties. Reasonable adjustments with regard to time and deadlines have been made throughout the 13 months of this case. As yet the Respondent has not submitted a full response or complied with the directions. In this email of 31st October 2020, Respondent stated again that a telephone hearing was not suitable and having previously stated that he found it hard to manage. He also stated in the email of 8th September 2020, 11 months after the proceedings commenced, that he was Dyslexic and needed to have all material on pink paper. The Housing and Property Chamber ordered the paper and made this reasonable adjustment. The Respondent also stated he was prepared to continue to receive email correspondence. A full set of case papers were sent to the Respondent on pink paper by recorded delivery. He was notified by email that the paperwork would be coming. This documentation was returned to the Housing and Property Chamber as undelivered and not called for on 26th October 2020. The Tribunal consider that the request for this reasonable adjustment was met. The arguments on the basis that the Respondent has been discriminated against was not found to be relevant by the Tribunal as the evidence before it did not show discrimination from the letting agent or the Housing and Property Chamber. In the Direction of 24th September 2020 the Respondent was required to submit medical evidence in support of his disabilities and evidence of the reasonable adjustments required. The Respondent did not provide this information. The Tribunal was not perused that this point, on the information before it, was relevant to this case.

54. Was it appropriate to proceed with the case on the papers?

The Tribunal had not reached this decision lightly. The Respondent had stated on two occasions at face to face hearings that he was overwhelmed by the process and felt that he could not represent his views at a face to face hearing due to his disabilities. The Respondent has made numerous postponement requests and stated that he could not proceed with a teleconferencing hearing

due to his disabilities. Since March 2020 the Housing and Property Chamber has not held face to face hearings due to Covid 19 restrictions. It is currently not possible to hold such hearings. Regardless of this the Respondent has said that the face to face hearings are not suitable nor are the telephone hearings suitable. The case started 13 months prior to this hearing. In that time the arrears have increased month on month without any payments being made. The Tribunal has allowed sufficient adjustments in the form of many postponements and guidance towards the Respondent getting professional representation that could assist him. Taking all of this into the whole the Tribunal considered it in the interests of justice to proceed. It was reasonable that the case be heard on the papers as the Respondent had indicated that the other hearings were not suitable to him. The Tribunal assisted the Respondent with a detailed direction and extra time to fill that direction in order that there would be sufficient information from the Respondent when the case was heard on the papers.

55. Was the outstanding amount claimed in the application form due?

The Tribunal was satisfied that the legal test had been met as explained above. The Tribunal was not satisfied that proof had been presented or lodged to show that the Applicant was not entitled to the outstanding amount due. In fact no payments had been made since the date of the application by the Respondent. The Tribunal was satisfied that the correct legal decision was that an Order should be granted.

56. The Tribunal noted that further information was submitted to the Housing and Property Chamber on 30th November 2020. This was forwarded to the Tribunal in the afternoon of the 30th November 2020. This was after the Tribunal had made the decision. The Tribunal did not find it fair and just to allow this extra information as the Applicant had not had fair notice of it and time to respond. The Tribunal discarded the information as a result in the interest of justice.

Findings and reason for decision

57. The parties entered into a Short Assured Tenancy on 9th September 2015 which was signed on 11th September 2015. An AT5 was signed by both parties on 3rd September 2015. The Respondent had lived in the Property since on or around 2012 with leases issued to him prior to this one.

58. The Housing and Property Chamber received an Application on 11th September 2019.

59. The Respondent persistently failed to pay his rent charge of £390 per month. The rent payments are due to be paid on 15th day of each month.

60. There is no evidence of any outstanding Housing Benefit or Universal Credit Housing Element issues.

61. The arrears sought in the Application totalled £2086.43. Since that point the Respondent has failed to make any payments which has caused the arrears to increase to £7936.43.

Decision

62. The Applicant is entitled to for an order of payment of £2086. by the Respondent. The Tribunal noted that while further rent statements were lodged by the Applicant at no point was there a request to amend the amount sought. As a consequence the Tribunal considered the amount sought to be that of the original application albeit that proof had been submitted that the rent arrears continued to accrue. The Order was granted against the Respondent.

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.



Gabrielle Miller
Legal Member/Chair

15 December 2020
Date