



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies)(Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/20/2513**

**Re: Property at 2R 17F Buttars Place, Dundee, DD2 4PL (“the Property”)**

**Parties:**

**Northwood Dundee, 2 Panmure Street, Dundee, DD1 2BW (“the Applicant”)**

**Mr Daryl Beattie, UNKNOWN, UNKNOWN (“the Respondent”)**

**Tribunal Members:**

**Graham Harding (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the Respondent in the sum of £2492.88.**

**Background**

1. By application dated 2 December 2020 the Applicant’s representatives Gilson Gray, Solicitors, Edinburgh applied to the Tribunal for an order for payment by the Respondent in respect of alleged rent arrears arising from the Respondent’s tenancy of the property. The Applicant’s representatives submitted a copy of the tenancy agreement together with copy rent statement in support of the application.
2. By Notice of Acceptance dated 18 January 2021 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.
3. Intimation of the CMD was attempted to be served on the Respondent by Sheriff Officers on 22 January 2021 however it was reported that the Respondent had vacated the property which was empty and unfurnished. Arrangements were made for service of the application on the Respondent by way of advertisement

on the Housing and Property Chamber Website. A Certificate of Advertisement dated 23 March 2021 was produced to the Tribunal confirming the application had been advertised from 15 February 2021 until 23 March 2021.

4. By email dated 3 March 2021 the Applicant's representatives applied to amend the sum claimed and provided the Tribunal with an updated rent statement.

### **The Case Management Discussion**

5. The Applicant was represented by Mr Scott Runciman of the Applicant's representatives. The Respondent did not attend and was not represented. The Tribunal being satisfied that proper intimation having been given to the Respondent by way of advertisement on the Housing and Property Chamber website determined to proceed in his absence.
6. The Tribunal noted that the application to amend the sum claimed had been intimated by the Applicant's representatives to the Respondent by email on 3 March 2021. The Tribunal being satisfied that proper intimation having been given allowed the application to be amended.
7. Mr Runciman confirmed to the Tribunal that following a Notice to Leave being served on the Respondent he had returned the keys to the property on 21 December 2020. The rent statement provided for rent due to that date and amounted to £2492.88. Mr Runciman confirmed no further payments had been received and that amount remained outstanding.
8. Mr Runciman asked the Tribunal to grant an order for payment for the rent due together with a further £234.00 in respect of the Applicant's legal expenses. The Tribunal queried whether it was appropriate to claim legal expenses given the terms of Section 64 of the Tribunals (Scotland) Act 2014 and Rule 40 of the First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Rules") and given it could not be said there had been any unreasonable behaviour on the part of the Respondent in the conduct of the proceedings. Mr Runciman submitted that there was a contractual agreement between the parties in terms of clause 9 of the tenancy agreement and likened the recovery of reasonable legal expenses to those available under the interest on commercial debt regulations. He explained that his firm charged a fixed fee for these applications and it was reasonable that the Applicant be allowed to recover the cost involved.

### **Findings in Fact**

9. The parties entered into a Private Residential Tenancy Agreement that commenced on 19 July 2019 at a rent of £500.00 per calendar month.
10. As at the date the tenancy ended namely 21 December 2020 the Respondent was due the Applicant rent in the sum of £2492.88.

## **Reasons for Decision**

11. The Tribunal was satisfied from the documents produced and the oral submissions that the parties entered into a Private Residential Tenancy agreement that commenced on 19 July 2019 at a rent of £500.00 per calendar month. The Tribunal was further satisfied that the Respondent was due rent amounting to £2492.88 as at 1 March 2021.
12. The Tribunal was satisfied that the Applicant's representatives had properly intimated the proposed amendment of the sum claimed to the Respondent by email on 3 March 2021. The Tribunal therefore allowed the application to be amended in accordance with Rule 14A of the First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
13. The Tribunal was not persuaded that it would be reasonable to grant an order for payment in respect of the sum claimed of £234.00 by way of the Applicants legal expenses. Although Clause 9 of the Tenancy agreement did make some provision for the Applicant claiming reasonable legal costs and expenses, if determined as appropriate the clause was far from clear and in any event the Tribunal was of the view that expenses should only be awarded in tribunal proceedings where there has been unreasonable behaviour by a party in the conduct of the proceedings and that was not the case here. The Tribunal was also not persuaded that there was a correlation between the commercial debt regulations and these proceedings and refused the Applicant's claim for legal expenses.
14. The Tribunal was satisfied it had sufficient information before it to allow it to make a decision without the need for a hearing.

## **Decision**

15. Having carefully considered the documents submitted in support of the application together with the oral submissions the Tribunal finds the Applicant entitled to an order for payment by the Respondent in the sum of £2492.88.

## **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.**