



**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/21/0433**

**Re: Property at 188 Laird Street, Dundee, DD3 9PN (“the Property”)**

**Parties:**

**Properties R Us, 17 Arkley Street, Dundee, DD3 7NJ (“the Applicant”)**

**Ms Kirsten Smith, 188 Laird Street, Dundee, DD3 9PN (“the Respondent”)**

**Tribunal Members:**

**Jan Todd (Legal 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 of Eleven thousand pounds and Fifty Six pence be granted in favour of the Applicant.**

- Background
- 1. This was a case management discussion (CMD) in respect of an application by the Applicant dated 24<sup>th</sup> January 2021 for an order for payment in respect of arrears of rent against the Respondent as the Tenant in a tenancy of the Property from the Applicant.
- 2. The following documents were lodged with the application:-
  - A copy of the Tenancy Agreement dated 15<sup>th</sup> March 2014
  - AT5 notice dated 15<sup>th</sup> March 2014
  - Rental Statement to 26<sup>th</sup> October 2020 ,
- 3. The Application was accepted by a legal member of the tribunal on 10<sup>th</sup> March 2021, and a direction was issued requiring the Applicant to provide an up to date rent statement showing the arrears currently outstanding as the rent statement lodged with the application showed a sum due of £9650.56 but the

sum sought was £11,650.56. In addition the legal member requested an explanation of how Properties R Us, the Applicant had title and interest to make the application when it is not noted as an owner.

4. The Applicant's representative is Ms Tania Royle of Ballie Shepherd Solicitor, who responded to the Direction on 17<sup>th</sup> March 2021 confirming that Properties R Us is the trading name of the landlords and owners of the Property Mr Airlie and Ms Norris. Properties R US are named on the lease as landlords. She also lodged a new rent statement showing a sum due of £11,650.56 up to and including the rent due for 26<sup>th</sup> February 2021.

## **CMD discussion**

5. The CMD proceeded today by way of teleconference due to the continued requirement at the current time for social distancing. The Convener made introductions, and explained how the CMD would be conducted over the teleconference. The Applicant did not attend but was represented by Mr Royle as the Applicant's representative.
6. The Respondent did not attend nor was she represented on the teleconference. The Respondent was served personally with the papers and a letter intimating the date and time of the CMD on 20<sup>th</sup> April 2021 at 2pm. The Respondent has been given fair notice and the Tribunal therefore felt it was appropriate and fair to continue in her absence.
7. Ms Royle advised that she was seeking an order for payment in the sum of £11,650.56 with interest at the rate of 4% above base rate as per the tenancy agreement.
8. Ms Royle referred to the written documentation and confirmed that tenancy had been created between the parties where the Respondent leased the Property from the Applicant from 15<sup>th</sup> March 2014 to 14<sup>th</sup> March 2015 and as it had not been brought to an end at the original ish date she confirmed it has continued by tacit relocation on a yearly basis since then
9. Ms Royle advised that the Respondent is still resident in the Property and as it is a yearly lease the Applicant is aware that they need to give 6 months' notice of intention to evict due to the revised coronavirus legislation and that if the tenant does not move out earlier they will intend to issue the relevant notices for terminating the tenancy and requiring the tenant to leave. In the meantime Ms Royle advised that the Applicant was seeking an order for payment up to 26<sup>th</sup> February 2021 as the rent due and outstanding was now considerable. She advised that arrears started in May 2018 and no payments have been made July 2019 and that another month's rent has become due since the application was made.
10. The Rent due in terms of the tenancy agreement is £500 per month payable on 26<sup>th</sup> day of each month.
11. The legal member queried why the rent statement shows a balance carried forward of £650 but shows no details of how that sum is made up. Ms Royle advised that she had no information about any arrears prior to the 26<sup>th</sup> May 2018 the first date shown on the rent statement which shows that the rent paid for that month and several months thereafter was £417.12. She could only assume there were previous arrears but confirmed she would have to

clarify how those arrears were made up with the Applicant and after some discussion confirmed that if that was an issue the Applicant would invite the Tribunal to make an order for the arrears that are detailed on the rent statement, and not insist on the extra sum of £650 but would reserve the right to claim that in any later application for payment which Ms Royle assumed would be necessary as there was already a further month's rent due for March 2021.

12. Ms Royle then explained that interest at the rate of 4% above base rate is due on any rent outstanding in terms of the lease in clause 2.11 of the tenancy agreement and requested that therefore interest be awarded at the rate of 4.1% on any award made.

## **Findings in Fact**

1. The parties entered into a lease of the Property which commenced on 15<sup>th</sup> March 2014 and in terms of the lease continued until 14<sup>th</sup> March 2015.
2. The Rent due in terms of the lease is £500 monthly payable in advance on 26<sup>th</sup> day of each month.
3. The Respondent is still resident in the Property.
4. The Respondent failed to pay the rent in full from May 2018 until 26<sup>th</sup> July 2019 and after that has not paid anything towards the rent due.
5. The rent outstanding from 26<sup>th</sup> May 2018 to and including 26<sup>th</sup> February 2021 is £11,000.56.
6. No further payments have been made towards the rent.
7. The Applicant intends to serve a Notice to Quit in time for the next ish date which will not be until March 2022

### **• Reasons for Decision**

8. The parties entered into a lease where the Respondent has leased the property from the Applicant from 15<sup>th</sup> March 2014 and has agreed to pay £500 monthly in rent.
9. The Respondent has failed to make full payment of rent since May 2018 and has not made any payment since 24<sup>th</sup> June 2019. The Applicant is entitled to recover rent lawfully due.
10. The Rental Statement shows further arrears may be due prior to May 2018 however there is no detail confirming how or when this may have occurred and ultimately Ms Royle advised she was content not to seek this but to add it to any future claim for further arrears.
11. The Tribunal notes interest is provided for in terms of the tenancy agreement and therefore agreed in terms of the Tribunal's rules it was appropriate to grant interest at that rate.
12. The Respondent has made no appearance at the CMD's held to discuss this application and has made no written representations despite the application, accompanying papers and the date and time of the CMD being intimated by Sheriff Officer personally on the Respondent on 23<sup>rd</sup> March 2021.
13. The Tribunal accepts the written evidence and verbal statements made by the Applicant's agent, who the Tribunal found clear and credible in her

evidence that the rent outstanding and due by the Respondent from May 2018 to 26<sup>th</sup> February 2021 amounts to £11,000.56  
14. There being no application for time to pay the Tribunal makes an order for payment of the sum of £11,000.56.

### **Decision**

An Order for payment of the sum of £11,000.56 is granted.

### **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.**

**J. Todd**

**20<sup>th</sup> April 2021**

---

**Legal Member/Chair**

**Date**