



**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/18/2896**

**Re: Property at 10 Barmuckity Lane, Elgin, Moray, IV30 6GN (“the Property”)**

**Parties:**

**Mrs Kim Harrison, 23 Dublin Street Lane South, Edinburgh, EH1 3PX (“the Applicant”)**

**Mr Adam Bortowski, Ms Anna Karpinska, 68 Pinefield Crescent, Elgin, Moray, IV30 6HY (“the Respondents”)**

**Tribunal Members:**

**Helen Forbes (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be granted in favour of the Applicant in the sum of Two thousand two hundred and fifty six pounds and forty seven pence (£2,256.47)**

**Background**

The Applicant made an application to the Tribunal dated 25<sup>th</sup> October 2018 seeking and order for payment in the sum of £2,256.47 in respect of unpaid rent. There was a tenancy agreement between the parties, in respect of the Property, commencing on 30<sup>th</sup> April 2015 and ending on 30<sup>th</sup> September 2018. The monthly rent was £495. The Applicant was previously granted an order for payment by the Tribunal on 3<sup>rd</sup> July 2018 in the sum of £2,785 (case reference FTS/HPC/CV/18/0933), in respect of unpaid rent for the period to 1<sup>st</sup> April 2018. After the tenancy ended, further rent was unpaid, and the remaining rent arrears are the subject of this application.

The case had previously called for case management discussions on 26<sup>th</sup> February and 15<sup>th</sup> April 2019. The earlier case management discussion had been continued to allow documents to be translated into Polish to assist the Respondents as it had

become clear that there was a lack of understanding as to why a further action had been raised. The Respondents had each been served with Earnings Arrestment Orders seeking over £2,500 in respect of the aforementioned previous order granted, and payments had commenced. The Respondents were concerned that they would both have to pay the earlier sum, which, together with the sum sought in this application would result in the Applicant recovering more than she was due. The Respondents were advised to take advice on this matter.

At the case management discussion on 15<sup>th</sup> April 2019, the Respondents had questioned whether their deposit of £495 had been returned to the Applicant and whether this ought to have been deducted from the arrears. The Respondent, Mr Bortowski, agreed that no rent had been paid from May 2018 to September 2018, when the tenancy ended. A Direction was made requiring the Applicant to confirm to the Tribunal whether the deposit had been returned to her and whether it was to be deducted from the rent arrears balance, and, if not, why it did not require to be deducted.

By email dated 10<sup>th</sup> May 2019, the Applicant confirmed that the deposit had been repaid to her and that it covered costs relating to damage to the property.

### **Summary of Discussion**

A case management discussion took place at Elgin Library, Cooper Park, Elgin, on 24th June 2019. The Applicant had informed the Tribunal that she would not be present due to family illness. The Respondent Ms Karpinska was in attendance. A Polish interpreter was present.

The Respondent, Ms Karpinska, confirmed that she had taken advice from the Citizens Advice Bureau in relation to the earnings arrestment and the previous case. They had confirmed that the Respondents should not pay more by earnings arrestment than the principal sum sought. It was explained to the Respondent that the Tribunal could not take that matter into account and that, if further advice was required, the Respondents should seek advice from the CAB or a solicitor. The Respondent accepted that the sum of £2,256.47 was outstanding as unpaid rent. That was not in dispute.

The Chair having indicated that the order was to be granted, the Respondent asked for an adjournment to seek advice from the CAB as she continued to be concerned that, through the earnings arrestment, the Respondents would end up paying more to the Applicant than is outstanding. This request was refused as 1) there was no dispute that the sum of £2,256.47 was outstanding; 2) the Respondents had been encouraged to take advice on the matter of the earnings arrestment at both previous case management discussions, and had, indeed, taken such advice; 3) the concerns of the Respondent related to the earlier action and not to the current action; 4) it would not be fair to the Applicant to continue matters further given the length of time since the action was raised. The Respondent was encouraged to seek advice from the CAB or a solicitor in relation to the earnings arrestment and the order for payment granted today.

## Findings in Fact

- There was a tenancy agreement between the parties, in respect of the Property, commencing on 30th April 2015 and ending on 30th September 2018.
- The monthly rent was £495.
- Rent arrears in the sum of £5041.47 were outstanding at the end of the tenancy.
- An order for payment in the sum of £2,785 was made by a previous Tribunal.
- The sum of £2,256.47 remained outstanding for the period after the previous action commenced.
- Rent lawfully due to the Applicant has not been paid by the Respondents.

## Reasons for Decision

Rent lawfully due to the Applicant by the Respondents has not been paid. The Applicant is entitled to the rent lawfully due.

## Decision

An order for payment is granted in favour of the Applicant in the sum of Two thousand two hundred and fifty six pounds and forty seven pence (£2,256.47)

## 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.**

H.Forbes

\_\_\_\_\_  
Legal Member/Chair

24th June 2019  
Date