



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 16 Housing (Scotland) Act  
2014**

**Chamber Ref: FTS/HPC/CV/20/1989**

**Re: Property at 24 Alexander Drive, Tillydrone, Aberdeen, AB24 2XE (“the  
Property”)**

**Parties:**

**Mrs Alison Iveson, 4 Waystead Close, Kingsmead, Northwich, Cheshire,  
England, CW9 8NN (“the Applicant”)**

**Mr Adeyinka Alase, 24 Alexander Drive, Tillydrone, Aberdeen, AB24 2XE (“the  
Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member)**

**Decision in absence of the Respondent**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that a payment order for the sum of £2593.15 should be  
granted against the Respondent in favour of the Applicant.**

**Background**

1. By application received on 16 September 2020 the Applicant seeks a payment order against the Respondent in relation to arrears of rent of £3450. A copy short assured tenancy agreement and rent statement were lodged with the application.
2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer on 9 October 2020. Both parties were advised that a Case Management Discussion (“CMD”) would take place on 11 November 2020 at 2pm by telephone conference call and that they were required to participate. The case called for a CMD on that date. The Applicant was represented by Mr Morrow. The Respondent did not participate and was

not represented. He did not contact the Tribunal or lodge written representations in advance of the CMD.

3. Following the CMD, a payment order for £3450 was granted against the Respondent. The Respondent subsequently made an application for recall of the decision. The Legal Member granted the recall on the grounds that the Applicant's representative had failed to disclose that the Respondent had notified him that his phone was broken and that a large payment had been made to the rent account. Following the recall parties were advised that the application would proceed to a further CMD which would take place by telephone conference call on 29 March 2021 at 10am. They were provided with a telephone number and passcode.
4. The CMD took place by telephone conference call on 29 March 2021 at 10am. The Applicant was represented by Mr Morrow and Mr Barr. The Respondent did not participate and was not represented. He did not contact the Tribunal in advance of the CMD or lodge written representations. Prior to the CMD the Applicant submitted an updated rent statement and Minute of extension of the original lease signed and dated July 2017, which states that the rent was to be increased from £520 to £600.

### **Case Management Discussion**

5. Mr Morrow advised the Legal Member that there has been contact with the Respondent but not in relation to the CMD. He could not offer any explanation for the Respondent's failure to participate. He confirmed that the Respondent continues to reside at the property, although he was due to vacate on 12 February 2021, following service of pre-eviction application notices.
6. Mr Morrow advised that the Applicant had agreed to reduce the rent from £600 to £400 in December 2020. This was conditional upon the Respondent continuing to make payments of £600, with the additional £200 being applied to the arrears. He referred the Legal Member to the updated rent statement. This shows the rent charge reducing to £400 from 12 December 2020. In December 2020, the Respondent made a payment of £600. £400 was paid in January, February, and March 2021, with an additional £100 paid on 24 March 2021. Mr Morrow confirmed that because of the amended rent, and the payments made by the Respondent, the arrears have reduced to £2593.93. He confirmed that a payment order is sought for this amount.
7. The Legal Member noted that the Applicant has lodged a Minute of Extension of the original lease. Mr Morrow advised that this was to address the challenge made by the Respondent in his application for recall regarding the legality of the increased rent. He explained that the Applicant had served notice on the Respondent for recovery of possession of the property but had then offered to allow the tenancy to continue at the higher rent. The Respondent agreed to this and had paid £600 per month from August 2017 until the account went into the arrears in April 2020.

## **Findings in Fact**

8. The Applicant is the owner and landlord of the property.
9. The Respondent is the tenant of the property in terms of a tenancy agreement dated 12 January 2017.
10. The Respondent was due to pay rent at the rate of £600 per month from August 2017 until 12 November 2020 and £400 per month from 12 December 2020.
11. The Respondent has been in arrears of rent since 12 April 2020.
12. The Respondent owes the sum of £2593.93 in unpaid rent to the Applicant for the period 12 April 2020 to 12 March 2021.

## **Reasons for Decision**

13. The Legal Member considered the application and the information provided by the Applicant's representatives at the CMD. The Legal Member noted that although the tenancy agreement states that rent is due at the rate of £520 per month, the Respondent appears to have paid the sum of £600 per month from August 2017 until April 2020, when the account went into arrears. In his application for recall the Respondent challenged the legality of the increased rent on the basis that rent can only be increased once a year and the tenancy had only been running for 8 months. A copy of a written agreement relating to the increased rent was submitted by the Applicant on the morning of the CMD. Due to the late lodging of it, the Tribunal was unable to send a copy of it to the Respondent. However, the Legal Member noted that in his only written representations (submitted in connection with the recall application), the Respondent did not dispute that he had agreed to the increased figure or that that he paid it for several years. He only indicated that a rent review can only take place annually and his lease had only been running for 8 months. This appears to be a reference to Section 24 of the Housing (Scotland) Act 1988. However, this section does not prevent a landlord and tenant agreeing an increased rent. Furthermore, it does not prevent a landlord from increasing the rent during the first year of a tenancy but does prohibit further increases being applied more frequently than every 12 months thereafter. In any event, the Applicant's representative explained that the increased rent did not arise from a notice being served in terms of section 24, but by agreement, and as an alternative to the Applicant bringing the tenancy to an end. The Legal Member is satisfied, from the rent statement and the information provided by Mr Morrow, that the Respondent was due to pay rent at the rate of £600 per month from August 2017 until December 2020, when the rent reduced to £400 per month.
14. The Legal Member is also satisfied that the Respondent first incurred arrears of rent when he failed to pay the rent charge due on 12 April 2020. Between 12

April 2020 and 19 November 2020 only four payments were made which totalled £1520. Between December 2020 and March 2021, the rent charge reduced to £400 per month and the Respondent made one payment of £600, three of £400, and one of £100. As a result of these payments the rent arrears have reduced to £2593.15. The Legal Member is satisfied that the Applicant is entitled to an order for payment for this sum.

## **Decision**

**15.** The Legal Member determines that a payment order should be granted against the Respondent for the sum of £2593.15.

## **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.**

**Josephine Bonnar, Legal Member**

**29 March 2021**