



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017**

**Chamber Ref: FTS/HPC/CV/18/2837**

**Re: Property at 4 Moredunvale View, Edinburgh, EH17 7JT (“the Property”)**

**Parties:**

**Mrs Catherine Vipond, 7 Broomside Terrace, Edinburgh, EH12 7LZ (“the Applicant”)**

**Mr Dean McMillan, 45 Moredun Park Street, Edinburgh, EH17 7HF (“the Respondent”)**

**Tribunal Members:**

**Andrew McLaughlin (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:**

This matter called for a Case Management Discussion at 10 am on 8 January 2019 at 126 George Street, Edinburgh. Mrs Sonia Dewar, who is also the Applicant’s Power of Attorney, represented the Applicant. The Respondent was personally present.

The Applicant sought a Payment Order for £4,300.00. In support of her Application, reference was made to a tenancy agreement and various printouts from bank statements showing certain payments that supposedly had been made by the Respondent. The Tribunal observed that the tenancy agreement appeared to relate to a period from 1 July 2014 until 1 July 2015. It was not signed by the Applicant and appeared to be signed by two tenants, despite only the Respondent, Mr Dean McMillan being narrated as a tenant in the Tenancy Agreement. Parties also spoke of there being other tenancy agreements relating to subsequent years.

The Tribunal observed that the bank statements provided did not establish any meaningful evidential basis to demonstrate the outstanding rent arrears. There was

no up-to-date rent statement provided and it did not seem possible to establish what the actual level of rent arrears may be. In short, The Applicant's case was not well set out.

The Respondent did however acknowledge that he owed about £4,000.00 in rent arrears. He also commented that he felt he had carried out some repairs to the property that had not been accounted for. The Respondent also spoke about his domestic circumstances and stated that he had been going through financial hard times. Importantly for the Tribunal, the Respondent also stated that he had "*never once told Mrs Vipond that he was not going to pay his rent*". He also mentioned not having asked Mrs Vipond about some of these repairs.

Despite the deficiencies in the Applicant's case, the Tribunal determined that the Respondent acknowledging that he owed £4,000.00 in rent arrears was a basis upon which a Payment Order could be made. The Tribunal considered that nothing the Respondent had said went nearly far enough to justify an argument that rent had been lawfully withheld under any defence of rent abatement. The fact that the Respondent acknowledged that he had never once told the Applicant that he was not going to pay his rent was significant.

The Tribunal considered that the fairest and most efficient manner of dealing with the Application was to make a Payment Order against the Respondent for £4,000.00

### **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.**

ANDREW MCLAUGHLIN

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**Legal Member/Chair**

8 JANUARY 2019.  
**Date**

\*Insert or Delete as required