



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 70(1) of the Private Housing
Tenancies (Scotland) Act 2016**

Chamber Ref: FTS/HPC/CV/19/3015

**Re: Property at 133 Spottiswoode Gardens, Mid Calder, Livingston, EH53 0JY
("the Property")**

Parties:

Mr George Gardiner, 13 Curlew Brae, Livingston, EH54 6UG ("the Applicant")

**Harper MacLeod, The Ca'd'oro, 45 Gordon Street, Glasgow, G1 3PE ("the
Applicant's Agent")**

**Mr Stuart Marshall, 133 Spottiswoode Gardens, Mid Calder, Livingston, EH53
0JY ("the Respondent")**

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined to make an order for payment in the sum of Three
thousand eight hundred and fifty pounds (£3,850) against the Respondent.**

Background

- 1 By application dated 25th September 2019 the Applicant sought an order for payment against the Respondent in respect of unpaid rent. In support of the application the Applicant provided the following documentation:-
 - (a) Short Assured Tenancy Agreement between the parties dated 19th June 2012; and
 - (b) Rent Statement.

- 2 By Notice of Acceptance of Application dated 1st November 2019 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds to reject the application. A Case Management Discussion was therefore assigned for 23rd December 2019.
- 3 The application paperwork together with notification of the Case Management Discussion was served on the Respondents by Sheriff Officers on 25th November 2019.

The Case Management Discussion

- 4 The Case Management Discussion took place at Riverside House, Edinburgh on 23rd December 2019. Alastair Johnston appeared on behalf of the Applicant's Agent. The Applicant's wife Kirsten Gardiner was also present. The Respondent did not attend. The Legal Member was satisfied that he had received proper notification of the date, time and location of the Case Management Discussion and therefore determined to proceed in his absence.
- 5 Mr Johnston advised that the last payment received was on the 4th May 2019. The rent arrears had now increased to the sum of £3,850. The Applicant had sought payment of £2200 in the application together with any further arrears that had accrued up to the date of the Case Management Discussion. The Applicant was therefore seeking the updated sum of £3,850.

Findings in Fact and Law

- 6 The parties entered into a Tenancy Agreement in respect of the property which commenced on 30 June 2012. The term of the tenancy was 30 June 2012 to 30th December 2012 and two monthly thereafter.
- 7 In terms of Clause 2 of the Tenancy Agreement the Respondent undertook to make payment of rent at the rate of £550 per month.
- 8 As at the date of the Case Management Discussion arrears in the sum of £3,850 are outstanding.
- 9 Despite repeated requests the Respondent has refused or delayed in making payment of rent lawfully due under the terms of the Tenancy Agreement between the parties.

Reasons for Decision

- 10 The Tribunal was satisfied that it was able to continue with the Case Management Discussion in the absence of the Respondent. He had received

service of the application by Sheriff Officers. The Tribunal therefore considered it could reasonably assume that he was aware of the Case Management Discussion and had been given the opportunity to attend or make written representations in response to the application.

- 11 The Tribunal was further satisfied that it was able to make a determination of the application at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties.
- 12 Based on the verbal and written representations from the Applicant's Agent, the Tribunal accepted that the Respondent was due to make payment of rent in the sum of £550 in terms of the Tenancy Agreement entered into between the parties. He had failed to do so since 4 May 2019. He had not put forward any evidence to counter the Applicant's position in this regard. The Tribunal found the Applicant's evidence to be credible as put forward by his agent and therefore accepted his position.
- 13 The Tribunal further accepted that the arrears had increased to £3,850 and that it would therefore be appropriate having regard to the terms of the application to increase the sum sought to that figure. The Tribunal considered that the Respondent would have had fair notice of same by virtue of the Applicant's statement of claim.
- 14 The Tribunal therefore determined to make an order for payment against the Respondent in the sum of £3,850.

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.

Ruth O'Hare

Legal Member/Chair

23/12/19

Date