

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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/18/3175**

**Re: Property at 40 Avon House, The Furlongs, Hamilton, ML3 0BL (“the  
Property”)**

**Parties:**

**Mr Cameron Barclay, Annfield Cottage, Glassford, Strathaven, ML10 6TX (“the  
Applicant”)**

**Mr Thomas Butler, 40 Avon House, The Furlongs, Hamilton, ML3 0BL (“the  
Respondent”)**

**Tribunal Members:**

**Sarah O’Neill (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that that an order for payment by the respondent of the  
sum of £3198 should be granted in favour of the applicant.**

**Background**

An application was received from the applicant on 26 November 2018 seeking a payment order brought in terms of rule 70 (Application for civil proceedings in relation to an assured tenancy under the Housing (Scotland) Act 1988) of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”).

The applicant was seeking payment of rent arrears of £2358 from the respondent in relation to the property, being the amount of arrears outstanding as at the date of the application.

The application included copies of the tenancy agreement, and a rent statement, showing the amount of rent outstanding as at 16 November 2018 to be £2358.

Notice of the case management discussion, together with the application papers and guidance notes, had been served on the respondent by sheriff officers on behalf of the tribunal on 7 January 2019.

Two emails were received from the respondent on 22 January 2019 with some brief written representations. He stated in one of these emails that he would attend the case management discussion on 23 January 2019.

### **The Case Management Discussion**

A case management discussion was held on 22 January 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The applicant was present and gave evidence on his own behalf. The respondent was not present and was not represented.

The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a case management discussion had been duly complied with. It was clear from the emails sent by the respondent on 22 January that he was aware of the case management discussion. The tribunal delayed the start of the discussion by 15 minutes, in case the respondent had been detained. He did not appear, however, and no telephone calls or messages had been received from him. The tribunal therefore proceeded with the case management discussion in the absence of the respondent.

The applicant produced an updated rent statement in respect of the respondent, showing the current rent arrears (up to Thursday 24 January 2019) to be £3198. He said that the respondent had been in arrears since shortly after the beginning of this tenancy, and had made no payments at all since June 2018. He said that as at the date of the case management discussion, the respondent was still living in the property.

He confirmed that he wished to amend his application to update the sum claimed to £3198, to include the rent arrears which had accrued since the date of the application, as shown on the updated rent statement which he had produced to the tribunal. He said that he had not sent the amended statement to the respondent, but that the respondent would be well aware that the arrears had increased, as he had stopped paying the rent altogether some time ago.

The tribunal considered whether to agree to the amendment. While it noted that the updated rent statement had not been sent to the respondent by the applicant prior to the case management discussion, it also noted that the rent statement showed that no rent had been paid since 20 June 2018. The tribunal also considered the emails received from the respondent on 22 January, the day prior to the hearing. In one of these emails, he provided a brief explanation as to the reasons why he had got into arrears.

He said that the arrears had built up as he had briefly been out of work and then had problems with universal credit. He had started to pay £200 per month towards the rent, but said the applicant had later told him that unless he paid the arrears, he

would need to move out. He admitted, however, that he had stopped paying the rent around July 2018, and had started to save money for alternative accommodation. At the case management discussion, the applicant produced a copy of email correspondence between himself and the respondent dated between June and August 2018, which confirmed this to be the case. These emails showed that the applicant had tried to resolve matters with the respondent, but that the respondent had stopped corresponding with him in August 2018.

In the circumstances, the tribunal decided to give consent to the applicant's request to amend the application to update the sum sought, in terms of rule 13 of Schedule 1 to the 2017 rules.

The tribunal noted that the tenancy agreement stated that a deposit of £365 was to be paid to the landlord within 12 months of the tenancy, according to a payment schedule agreed between the parties, for the deposit to be paid over several weeks. The applicant told the tribunal that this deposit had never been paid by the respondent, and the rent statement and bank accounts provided with the application appeared to confirm this. He told the tribunal that he had been given a guarantee by South Lanarkshire Council under its Rent Deposit Scheme that it would cover the amount of the deposit if necessary, but that this only applied in respect of damage to the property, and specifically excluded unpaid rent.

### **Findings in Fact**

- The tribunal was satisfied that there was a valid short assured tenancy in place between the parties.
- The rent payable under the tenancy agreement was £168 per fortnight.
- The respondent had paid no rent since 20 June 2018.
- No deposit was paid by the respondent in relation to the tenancy.
- As at the date of the case management discussion, the respondent owed the applicant the sum of £3198 in rental payments.

### **Reasons for Decision**

Having considered all of the evidence before it, and in the absence of any evidence from the respondent to the contrary, the tribunal was satisfied that an outstanding balance of rent arrears was due as at the date of the case management discussion in the sum of £3198. The tribunal accepted the applicant's evidence that no deposit had been paid in respect of the tenancy. It was therefore unable to deduct the deposit sum from the outstanding arrears in making an order for payment.

### **Decision**

The tribunal grants an order for payment by the respondent to the applicant for the sum of £3198.

## 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.

Sand O'Neil  
Legal Member/Chair

23/11/19  
Date